

# BANKRUPTCY REFERENCE MANUAL

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Revised December 1, 2014

# UNITED STATES BANKRUPTCY COURT MIDDLE DISTRICT OF GEORGIA

## NOTICE

This Desk Reference Manual is not intended to be a source of additional technical requirements, nor the basis for technical challenges to bankruptcy filings. It was developed in the hope that it would assist practitioners in the United States Bankruptcy Court for the Middle District of Georgia, and was prepared using information, policies, and procedures in effect as of June 1, 2014.

Consequently, this manual shall not be cited to the court as a ground for striking or otherwise objecting to the form or content of a pleading or other filings, nor should it be cited as support for such filings. The legal sufficiency of any matter filed in the court is determined solely by reference to the United States Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, Local Rules of the court, and any general orders of the United States Bankruptcy Court for the Middle District of Georgia.

Material contained in this manual represents suggestions concerning preferred practices in the court. This manual is subject to change as laws, regulations, policies and procedures which affect operations in this court change.

KYLE GEORGE  
CLERK OF COURT

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# I. BANKRUPTCY COURT AT A GLANCE

## Business Hours of the Court

The public business hours of the Office of the Clerk are 8:30 a.m. to 5:00 p.m., Eastern Time, all days except Saturday, Sunday and federal holidays. Registered users of the CMECF system have access to file and view documents 24 hours per day, 7 days a week. In an emergency and subject to review by the court, papers may be filed at other times by making prior arrangements with the Clerk or Chief Deputy.

## Judges

The Honorable John T. Laney, III, Chief Judge  
 The Honorable James P. Smith  
 The Honorable Austin E. Carter

## Clerk of Court

Kyle George

## Mailing Address of the Court

Macon Office: P. O. Box 1957, Macon, GA 31202

Columbus Divisional Office: P. O. Box 2147, Columbus, GA 31902

## Telephone Numbers - Clerk's Office

### Macon Office

**478-752-3506**

#### **Direct Dial**

Chief Deputy	749-6852
Administrative Secretary	749-6840
Financial Deputy (Macon/Columbus)	749-6844
Courtroom Deputy/Calendar Clerk (Judge Smith)	749-6865
Courtroom Deputy/Calendar Clerk (Judge Carter)	749-6885
Personnel Specialist	749-6843
Procurement Deputy	749-6845
Staff Operations Manager	749-6836
Supervisor	749-6837
Supervisor	749-6838
Supervisor	749-6832

### Columbus Office

**706-649-7837**

#### **Direct Dial**

Court Support (Judge Laney)	596-7153
Courtroom Deputy (Judge Laney)	596-7152
Supervisor	596-7141

## Court Hearing Locations

Albany Division	C. B. King U.S. Courthouse 2 <sup>nd</sup> Floor 201 Broad Avenue Albany, GA 31701
Athens Division	United States Courtroom U.S. Post Office Building 115 E. Hancock Ave. Athens, GA 30601
Columbus Division	U. S. Courtroom One Arsenal Place, Suite 309 901 Front Ave. Columbus, GA 31901
Macon Division	U. S. Courtroom A (Judge Smith) or Courtroom B (Judge Carter) 433 Cherry St. Macon, GA 31201
Valdosta Division	U. S. Courtroom U. S. Courthouse and Post Office Building 401 N. Patterson St. Valdosta, GA 31601

While hearings are scheduled in all divisions, the only staffed offices are in Macon and Columbus.

## 341 Meeting Locations

Albany Division	345 W. Broad Street Old Albany Federal Courthouse & Post Office - 3 <sup>rd</sup> Floor Albany, GA 31707
Athens Division	The Classic Center 300 North Thomas Street Athens, GA 30601
Columbus Division	The Rankin Building #7 10 <sup>th</sup> Street Columbus, GA 31901
Macon Division	341(a) Meeting Room 433 Cherry St. First Floor, Suite C Macon, GA 31201
Valdosta Division	U. S. Courthouse and Post Office Building Room 257 401 N. Patterson St. Valdosta, GA 31601

## United States Trustee and Trustees

The addresses and telephone numbers for the U. S. Trustee and all Assistant U. S. Trustees who may be involved in cases in the Middle District of Georgia can be found in the **CLERK'S INSTRUCTIONS**.

### Trustees:

Ernest V. Harris  
Chapter 7 - Athens  
P. O. Box 1586  
Athens, GA 30603 - 706-613-1953

Walter W. Kelley  
P. O. Box 70879 - Ch. 7 Col, Val, Mac  
P. O. Box 70849 - Ch. 12 - All Divisions  
Albany, GA 31708  
Chapter 7 Cases - 229-888-9128  
Chapter 12 Cases - 229-888-2257

Ray Holland  
Chapter 7 - Albany  
P. O. Box 844  
Ashburn, GA 31714 - 229-567-2824

William M. Flatau  
Chapter 7 - Macon, Athens  
355 Cotton Avenue  
Macon, GA 31201 - 478-742-6481

Camille Hope  
Chapter 13 - Macon, Athens  
P. O. Box 954  
Macon, GA 31202 - 478-742-8706

Kristin Smith  
Chapter 13 - Albany, Columbus, Valdosta  
1031 Front Ave; W.C. Bradley Bldg.  
Columbus, GA 31902 - 706-327-4151

Joy R. Webster  
Chapter 7 - Macon, Columbus, Albany  
P. O. Box 1098  
Macon, GA 31202 - 478-742-1889



## Federal Holidays

The United States Bankruptcy Court closes in observance of the following federal holidays:

* New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	3rd Monday in January
President's Day	3rd Monday in February
Memorial Day	Last Monday in May
* Independence Day	July 4
Labor Day	1st Monday in September
Columbus Day	2nd Monday in October
* Veteran's Day	November 11
Thanksgiving Day	4th Thursday in November
Christmas Day	December 25

\* When this holiday occurs on a weekend, the court will close on the nearest Friday or Monday.

## Form of Filing Fees and Miscellaneous Fees

Registered users of the court's electronic filing system shall pay all filing fees by on-line credit card payment using the Pay.Gov system as set out in the **CLERK'S INSTRUCTIONS**. Non registered filers shall remit fees in the form specified below.

1. Cash (**Exact change required - DO NOT MAIL CASH**)
2. Money Order
3. Certified check drawn on a bank which is a member of the Federal Reserve system
4. Check drawn upon the account of an attorney or other entity whose check is acceptable to the Clerk

All checks or money orders must be payable to the "**Clerk, United States Bankruptcy Court.**"

A check or money order should not be payable to an individual court employee's name. Personal checks are not accepted. (See **CLERK'S INSTRUCTIONS for fee schedule**)

## Case/Judge Assignment

Upon the filing of a petition, the case is assigned promptly to a Bankruptcy Judge. Unless there is a conflict of interest, cases are assigned as follows:

### **THE HONORABLE JAMES P. SMITH**

- Athens Division
- Macon Division

### **THE HONORABLE JOHN T. LANEY, III**

- Columbus Division
- Valdosta Division

### **THE HONORABLE AUSTIN E. CARTER**

- Albany Division
- Macon Division

## Division Numbers/Assignment of Case Numbers

Each division is assigned a division number:

- |            |   |   |
|------------|---|---|
| ● Albany   | - | 1 |
| ● Athens   | - | 3 |
| ● Columbus | - | 4 |
| ● Macon    | - | 5 |
| ● Valdosta | - | 7 |

The division number is always a part of the case number and is the first number after the dash, i.e., 14-40493. Also, the case number must include the initials of the judge assigned to the case, i.e., 14-40493 JTL or 14-10493 AEC or 14-50493 JSP. Please include the judge's initials as a part of the case number when filing all pleadings.

## Divisions and Counties in each Division

The counties included in each division can be found in the **CLERK'S INSTRUCTIONS**.

## Miscellaneous Forms Found in the Clerk's Instructions and on the Court's Web Page

### Clerk's Instructions

- ▶ Final Report and Application for Final Decree in Chapter 11
- ▶ Chapter 13 Plan
- ▶ Request to Expedite Appeal
- ▶ Ballot Summary
- ▶ Certification Regarding Request For Expedited Hearing
- ▶ Certification Regarding Undeliverable Notices

### Web Page

- ▶ Official Bankruptcy Forms Online
- ▶ Summons and Notice of Pretrial Conference in an Adversary Proceeding (Form B 250B)
- ▶ Certificate of Service of Summons in an Adversary Proceeding
- ▶ Proof of Claim (Form B10)
- ▶ Statement of Social Security Number (Form B21)
- ▶ Adversary Proceeding Cover Sheet (Form B104)
- ▶ Notice to Individual Consumer Debtor Under Section 342(b) (Form B201)
- ▶ Subpoena in an Adversary Proceeding (Form B255)
- ▶ Subpoena in a Bankruptcy Case (Form B256)
- ▶ Application for Search of Bankruptcy Records (Form B 132)

## Official Forms Available from the Clerk's Office

- ▶ Statement of Social Security Number (Form B21)
- ▶ Application to Pay Fees in Installments (Form B3A)
- ▶ Subpoena in an Adversary Proceeding (Form B255)
- ▶ Subpoena in a Bankruptcy Case (Form B256)
- ▶ Proof of Claim (Form B10)
- ▶ Adversary Proceeding Cover Sheet (Form B104)
- ▶ Exemplification Certificate (Form B131)

Additionally, the Archive Retrieval Form is available in the Clerk's Office.

## PACER

Access to the court's Public Access to Court Electronic Records (PACER) is available to those interested in accessing the system. The purpose of the system is to allow parties to retrieve electronic case summaries, docket and claims information. As directed by Congress, the Judicial Conference has determined that a per page access fee is necessary to reimburse expenses incurred by the judiciary in providing electronic public access to court records.

You can search for bankruptcy case information by the participant's name, case number, social security number or tax identification number. Once the desired case is located, basic case information and a listing of the case docket entries are available. The progress of a case can be easily tracked.

If you would like to obtain additional information or register for PACER service, please contact the PACER Service Center at the following address:

PACER Service Center  
P. O. Box 780549  
San Antonio, TX 78278-0549  
1-800-676-6856, (210)-301-6440  
<http://pacer.psc.uscourts.gov>

Computers in the public area of the Clerk's Office in Macon and Columbus may be used without charge.

## MCVCIS

The Multi-Court Voice Case Information System (MCVCIS) allows an individual to access bankruptcy case information by using a touch tone telephone or through voice recognition in English and Spanish. The user can query the court's computer by debtor name, social security number, or case number. Once the desired case is located, basic case information including filing date, chapter, attorney, trustee, judge, and certain deadline information is available. MCVCIS can be reached toll free by dialing 866-222-8029 and following instructions from the telephone system's auto-attendant.

## Internet Web Page

The Clerk's Office has established an Internet web page where important and useful information can be found. As mentioned above, some miscellaneous and official forms can be found there. In addition,

court calendars, employee telephone extensions, fee schedules, filing checklists, local rules, and statistical data have been included. This web site is a major source of information. The court's web page can be accessed at [www.gamb.uscourts.gov](http://www.gamb.uscourts.gov).

## II. FILING INFORMATION AND REQUIREMENTS

### Commencement of Case

A bankruptcy case, voluntary or involuntary, is commenced by filing a petition with the Clerk of the Bankruptcy Court. 11 U.S.C. §301-303; FRBP 1002. In a voluntary case, the debtor shall file with the petition a list containing the name and address of each creditor. In a Chapter 11 case, the petition shall also be accompanied by a list of the 20 largest unsecured creditors. FRBP 1007(d). The filing of the petition marks a point in time from which many events are measured, and the filing or non-filing of the petition may decisively affect rights of creditors and debtors. Normally, even a defective petition is accepted for filing and a deadline is then given for correcting any deficiencies.

### District Where Petition Should be Filed

The provisions which specify the judicial district in which a petition must be filed are set forth in 28 U.S.C. §1408. The statutory provisions relating to the venue of bankruptcy matters are summarized below:

A case may be commenced under Title 11 in the District Court (i.e., Bankruptcy Court) in which:

- (1) the domicile, residence, principal place of business in the United States, or principal assets in the United States, of the debtor have been located for the 180 days immediately preceding commencement of the case, or for a longer portion of the 180-day period than the domicile, residence, principal place of business in the United States, or principal assets in the United States, of the debtor were located in any other district; or
- (2) a case is pending under Title 11 concerning the debtor's affiliate, general partner, or partnership.

### Official Forms Must Be Used

FRBP 9009 prescribes that the Official Forms "shall be observed and used with alterations as may be appropriate." Printed versions of the Official Forms are produced by commercial legal printers or office supply stores. They are also available through various computer software packages. Additionally, Official Bankruptcy Forms On Line may be accessed through the court's web site - [www.gamb.uscourts.gov](http://www.gamb.uscourts.gov).

### Petitions Must Be Verified and Signed

The original petition must be verified by the petitioner or contain an unsworn declaration as provided in 28 U.S.C. §1746, FRBP 1008, RBP 9011(c). If the debtor is represented by counsel, it is required that counsel use the CMECF system for filing all petitions and documents.

## Types of Cases

- Chapter 7** - Orderly liquidation of debtor's non-exempt assets by a trustee and the equitable distribution of the proceeds to creditors. An involuntary petition is permitted under this chapter. 11 U.S.C. §303(a).
- Chapter 9** - Allows a municipal unit to continue to operate while it adjusts or refinances creditors' claims with minimum loss to its creditors. An involuntary petition is not permitted under this chapter. 11 U.S.C. §303(a).
- Chapter 11** - Business reorganization which permits a debtor to restructure its finances so that it may continue to operate, provide its employees with jobs, pay its creditors, and produce a return for its stockholders. Individuals may also file a petition under Chapter 11 to work out a resolution of debt. Chapter 11 can also be used as a method of liquidation through a plan. An involuntary petition is permitted under this chapter. 11 U.S.C. §303(a).
- Chapter 12** - Adjustment of debts of a family farmer or family fisherman with a regular annual income. 11 U.S.C. §109(f). It is designed to meet the needs of the family farmer or family fisherman while preserving the rights of lenders. The total debts (secured and unsecured) of the operation must not exceed \$3,792,650 (if a farming operation) or \$1,757,475 (if a commercial fishing operation), and there are detailed restrictions on the nature of the debt. 11 U.S.C. §101(18). An involuntary petition is not permitted under Chapter 12. 11 U.S.C. §303(a).
- Chapter 13** - Adjustment of debts of an individual with regular income. This chapter is available only to individuals and their spouses, but may include business debts of such individuals. Chapter 13 is, limited to those individuals unsecured debts are less than \$383,175 and secured debts are less than \$1,149,525. 11 U.S.C. § 109(e). These amounts are adjusted periodically to reflect changes in the consumer price index. A corporation or partnership may not be a chapter 13. An involuntary petition is not permitted under Chapter 13. 11 U.S.C. §303(a).

## Multiple Entities as Debtor

The clear implication of §301 and §302 of the Code is that only one entity may be a debtor in one case, except for a husband and wife filing jointly. Thus, a petition captioned as:

**John J. Jones  
Jones & Sons, Inc.**

is not valid, at least in terms of having effectively commenced a case as to both the individual and the corporation.

## Joint Cases

A joint case may be filed by debtor and debtor's spouse under each chapter by filing a single petition. 11 U.S.C. §302. Note, however, that a spouse cannot be added by amendment after the case is filed. A separate case must be filed by the spouse in this instance, and the full filing fee paid. A joint voluntary case does not require the payment of two filing fees, however an involuntary petition against both a husband and wife does require the filing of two separate petitions and the payment of two filing fees.

## Order for Relief

In a voluntary case, the filing of the petition constitutes an order for relief. 11 U.S.C. §301. Thus, no actual "Order for Relief" is entered. In an involuntary case, however, an actual order for relief is entered when either: (a) the petition is not timely controverted; or (b) the statutory grounds for entry of the order are established after trial. 11 U.S.C. §303(h). ***Bankruptcy Reform Act of 1994, increased dollar amounts in involuntary cases to require that involuntary petitions by three or more creditors must have aggregate claims of at least \$10,000 more than the value of any lien, and if there are fewer than 12 creditors, by one or more creditors holding a claim in the aggregate of at least \$10,000 of such claims.***

## Filing a Voluntary Case

In a Chapter 7, 11, 12, and 13 case, the following documents are required and must be filed with the petition unless a later time is specified. The petition and accompanying documents shall be organized in the following order with exceptions as noted:

### Voluntary Petition

- ▶ Chapter 13 Plan (only in Chapter 13 cases)
- ▶ Statement of Attorneys Fees pursuant to Bankruptcy Rule 2016(b)
- ▶ Statement of Social Security Number - Form B21 (for individual debtors only)

Application to Pay Fees in Installments - Upload Proposed Electronic Order (e-order) only when fee is to be paid in installments)

List of 20 Largest Unsecured Creditors (only in Chapter 11 cases)

- ◆ Schedules
  - Summary
  - Schedule A - Real Property
  - Schedule B - Personal Property
  - Schedule C - Property Claimed as Exempt
  - Schedule D - Creditors Holding Secured Claims
  - Schedule E - Creditors Holding Unsecured Priority Claims
  - Schedule F - Creditors Holding Unsecured Nonpriority Claims
  - Schedule G - Executory Contracts and Unexpired Leases
  - Schedule H - Co-debtors
  - Schedule I - Current Income of Individual Debtor(s)
  - Schedule J - Current Expenditures of Individual Debtor(s)
  - Unsworn Declaration under Penalty of Perjury
- ◆ Statement of Financial Affairs

Statement of Current Monthly Income - Official Form 22A, 22B or 22C

Certificate of Credit Counseling

Chapter 7 Individual Debtor's Statement of Intentions. (With petition or within 30 days of filing or by the Meeting of Creditors, whichever is earlier) 11 U.S.C. §521(A).

Notice to Individual Consumer Debtor

Creditor Matrix - see LBR 1007-2

- ◆ If petition is accompanied by a list of creditors and their addresses, schedules and statement of affairs must be filed within 14 days. FRBP 1007. Plan and Statement of Attorneys Fees must be filed with petition or within 14 days. FRBP 3015(b) and FRBP 2016(b).

Individual checklists for the voluntary filing of all chapters (as well as adversary proceedings) can be found in the **CLERK'S INSTRUCTIONS**.

## Filing an Involuntary Petition

Involuntary Petitions (Official Form B5) may be filed in Chapter 7 or Chapter 11 cases. The filing fee must accompany the petition. Upon filing, the Clerk will issue a summons to be served by the petitioner. If an order for relief is entered, the debtor shall file within 14 days, the following documents in the following order:

Statement of Attorneys Fees (Pursuant to Bankruptcy Rule 2016(b))  
 List of 20 Largest Unsecured Creditors (Only in Chapter 11 cases)  
 Schedules  
 Summary

- Schedule A - Real Property
- Schedule B - Personal Property
- Schedule C - Property Claimed as Exempt
- Schedule D - Creditors Holding Secured Claims
- Schedule E - Creditors Holding Unsecured Priority Claims
- Schedule F - Creditors Holding Unsecured Nonpriority Claims
- Schedule G - Executory Contracts and Unexpired Leases
- Schedule H - Codebtors
- Schedule I - Current Income of Individual Debtor(s)
- Schedule J - Current Expenditures of Individual Debtor(s)
- Unsworn Declaration under Penalty of Perjury

Statement of Financial Affairs  
 Chapter 7 Individual Debtor's Statement of Intentions (only in Chapter 7 cases)  
 Creditor Matrix - see LBR 1007-2

## Filing Fees Required

The petition must be accompanied by a filing fee or an application to pay fees in installments with proposed order. The following filing fees are required in accordance with 28 U.S.C. §1930(a):

Chapter 7 - \$335 (includes \$75 administrative fee and \$15 Trustee surcharge)  
 Chapter 13 - \$310 (includes \$75 administrative fee)  
 Chapter 11 - \$1717 non-railroad, \$1550 railroad (includes \$550 administrative fee)  
 Chapter 12 - \$275 (includes \$75 administrative fee)

Registered users of the court's electronic filing system shall pay all filing fees through the Pay.Gov system as set out in the **CLERK'S INSTRUCTIONS**. Non registered filers shall remit fees in the form of a check or money order made payable to "Clerk, U. S. Bankruptcy Court." **PERSONAL CHECKS ARE NOT ACCEPTED.** Payment of filing fees in installments is permitted only for voluntary petitions filed by an individual. The number of installments proposed by the petitioner must not exceed four (4), with the final installment to be paid not later than 120 days after filing. FRBP 1006(b). The application to pay in installments must specify the dates of the proposed payment schedule.

# ELECTRONIC FILING - FAX AND EMAIL POLICY

## (LBR 5005-4)

**RECEIPT OF FACSIMILE OR EMAILED FILINGS:** Subject to requirements of this Rule, a pleading, complaint, petition or other document to be filed with the Court may be accepted as timely filed by transmission to the Court through a facsimile machine or sent by email to the court email inbox at [EmergencyFilings@gamb.uscourts.gov](mailto:EmergencyFilings@gamb.uscourts.gov). No facsimile or emailed pleading or document shall be accepted or deemed filed without prior approval.

**APPROVAL OF FACSIMILE OR EMAILED DOCUMENTS:** The pleading, complaint, petition or other document to be filed shall be authorized to be received for filing by a judge of this Court, the Clerk of Court, or by the Clerk's designee. Such authorization shall be obtained prior to the sending of the document and shall be based on a showing of time critical need and that the filer is unable to gain access to the Court's Electronic Case Filing System. In the event the filer is a non-attorney filer, discretion shall be used to determine whether to approve the receipt of the document by facsimile or email.

**PROCEDURE FOR FILING FACSIMILE OR EMAILED DOCUMENTS:** The facsimile copy sent to the Court shall include (1) a cover sheet that includes a brief statement of the time critical status of the pleading, complaint, petition or other document, (2) the reason the original cannot be filed timely and, (3) the identification of the Court individual authorizing its receipt. This cover sheet shall be filed with the pleading in the electronic case file. The party sending the facsimile document is solely responsible for calling the court to ensure that it is fully and accurately received. The docketing of the document shall reflect that it is a facsimile document, the name of the Court employee who authorized the receipt of the document, and the name of the attorney or other individual who sent the document.

**PROCEDURE FOR EMAILING DOCUMENTS:** The email containing the document sent to the Court shall include (1) a brief statement of the reason the filer has requested permission to send the pleading or document by email and, (2) the identification of the Court individual authorizing and/or accepting its receipt. A copy of this email shall be filed with the pleading in the electronic case file. All documents attached to emails and submitted to the court shall be in PDF format. The party sending the emailed document is solely responsible for calling the court to ensure that it is fully and accurately received. The email address to which these emails should be sent is [EmergencyFilings@gamb.uscourts.gov](mailto:EmergencyFilings@gamb.uscourts.gov). The docketing of the document shall reflect that it is an emailed document, the name of the Court employee who authorized the receipt of the document, and the name of the attorney or other individual who sent the document.

**CONVERSION OF THE FAXED DOCUMENTS:** The pleading, complaint, petition or other document submitted by facsimile shall be converted to an electronic image by the court and the electronic image shall be the official record of the document.

**FACSIMILE FILING FEE:** A fee for the acceptance of facsimile documents shall be paid to the Clerk's Office. The amount of the filing fee is available from the fee schedule in the **CLERK'S INSTRUCTIONS**.

## AMENDMENTS TO PETITIONS

The general rule is that a debtor may amend a voluntary petition, list, schedule, or statement of financial affairs as a matter of course at any time before the case is closed. FRBP 1009(a). There are two notable exceptions to this rule:

- The period for amending the statement of intentions is limited to 45 days after the filing of the statement, unless the court grants an extension. FRBP 1009(b); and



- A voluntary petition of an individual cannot be later amended to include the non-filing spouse. The non-filing spouse must file a new petition and pay the full filing fee.

Amendments shall be verified by the debtor. FRBP 1008.

## Notice of Amendment

When an amendment is made as a matter of course by the debtor, the debtor must give notice to the trustee and to any entity affected thereby. FRBP 1009(a). A certificate of service must be attached to the amendment. When an amendment is ordered as a result of a motion by a party in interest, the Clerk is required to give notice to the entities designated by the court. FRBP 1009(a).

## Fees for Amendments

The Judicial Conference's miscellaneous fee schedule prescribes a fee of \$30 for certain amendments to a debtor's schedule of creditors or list of creditors.

# PROOFS OF CLAIM

## Filing and Service of Proofs of Claim

- **INTEREST:** For all claims filed, creditors who calculate interest by using the "add on interest" method shall rebate interest from their claims by using the "pro rata" method. LBR 3001-1(a).
- **ELECTRONIC FILING OF CLAIMS:** Entities that file 15 or more proofs of claim during any 12-month period shall file the claims electronically or obtain a Judicial Waiver. Attorneys who file claims for themselves, their firms, or on behalf of any other entity shall file all claims electronically regardless of number. If paper claims are filed in violation of this rule without a Judicial Waiver, the Court shall consider striking the documents. LBR 3001-1(b).
- **EXTENSION OF TIME TO FILE:** Creditors added to a bankruptcy case by amendment later than 60 days before the original bar date shall be allowed 60 days from the date of the filing of the amendment to file a proof of claim. LBR 3001-1(c)
- **BAR DATE FOR FILING CLAIMS IN CHAPTER 11 REORGANIZATION CASES:** For all bankruptcy petitions filed under Chapter 11, the bar date for filing of proofs of claim or interest shall be 90 days from the first scheduled § 341(a) Meeting of Creditors. For cause shown, the Court shall consider extending the time to file proofs of claim upon the filing of an appropriate motion or request within the 90-day period. LBR 3001-1 (d)
- **CLAIMS SECURED BY SECURITY INTEREST IN THE DEBTOR'S PRINCIPAL RESIDENCE:** When a creditor files a supplemental claim for fees, expenses, and charges pursuant to FRBP 3002.1(c) and (d) prior to the payment of the last payment under the plan by the debtor, the claim may be paid through the plan by the Chapter 13 Trustee as if it arose pre-petition unless within 60 days from the filing of the claim either the Trustee or the debtor objects to its allowance. LBR 3002.1-1.

- **NOTICE FOR FINAL CURE - RESPONSE:** If a creditor agrees with the information contained in the Notice of Final Cure Payment filed by the debtor or the Trustee, the response by the creditor indicating agreement may be filed pro se.

## Who May Execute a Proof of Claim

A proof of claim shall be executed by the creditor or the creditor's authorized agent except as provided in FRBP 3004 and 3005. FRBP 3001(b). FRBP 3004 permits a debtor or trustee to file a proof of claim for a creditor within 30 days after expiration of the time for filing claims when none has been filed on behalf of the creditor by the first date set for the meeting of creditors. When the debtor/trustee files a claim on behalf of a creditor, the creditor must have been **previously** scheduled and properly notified. Also, debtor-filed claims should be **legible** (typewritten) and full name, address, zip code and exact amount of claim shown. FRBP 3005 provides that a co-debtor or one who has pledged security to a creditor may file a proof of claim in the name of the creditor, if the creditor did not file a claim pursuant to FRBP 3002(c) or 3003(c).

## Evidence of Perfection of Security Interest

If a security interest in property of the debtor is claimed, the proof of claim shall be accompanied by evidence that the security interest is perfected. FRBP 3001(d).

## Time for Filing Claims

- Chapter 7 ♦ A proof of claim shall be filed within 90 days after the first date set for the 341 Meeting of Creditors. See FRBP 3002(c) for exceptions.

In a Chapter 7 liquidation case, the notice of the meeting of creditors includes a statement to the effect that it is not necessary to file claims and that if sufficient assets become available for the payment of a dividend, further notice will be given for the filing of claims. FRBP 2002(e). DO NOT FILE CLAIMS UNTIL GIVEN NOTICE TO DO SO.

- Chapter 11 ♦ Pursuant to FRBP 3003(b)(1) the schedule of liabilities filed pursuant to §521(1) of the Code shall constitute prima facie evidence of the validity and amount of claims of creditors, unless they are scheduled as disputed, contingent or unliquidated. It shall not be necessary for a creditor or equity security holder to file a proof of claim except where creditor's or equity security holder's claim or interest is not scheduled or scheduled as disputed, contingent or unliquidated or, the amount scheduled is not correct. FRBP 3003(c)(2). A proof of claim or interest executed and filed by a creditor or equity security holder supersedes any scheduling of that claim or interest. FRBP 3002(c)(4).

For all bankruptcy petitions filed in Chapter 11 of the U.S. Bankruptcy Code, the bar date for filing of proofs of claim or interest shall be 90 days after the first date set for the 341 Meeting of Creditors. For cause shown, the court will consider extending the time to file proofs of claim upon the filing of an appropriate motion or request within the 90-day period. LBR 3001-1(d).

- Chapter 12 ♦ A proof of claim shall be filed within 90 days after the first date set for the 341 Meeting of Creditors. See FRBP 3002(c) for exceptions.

- Chapter 13 ♦ A proof of claim shall be filed within 90 days after the first date set for the 341 Meeting of Creditors. See FRBP 3002(c) for exceptions.

*Pursuant to Section 213 of the Bankruptcy Reform Act of 1994, governmental units have 180 days from the order for relief to file claims. According to opinion of the Bankruptcy Division of the Administrative Office, in converted cases governmental units have 180 days from the order for relief in the original chapter, 90 days after the first meeting under the new chapter, or time fixed by court, whichever is greater, to file their claims. 11 U.S.C. §509(b)(9).*

## Place for Filing Claims

Entities that file fifteen (15) or more proofs of claim in a year must file the claims electronically. Entities that file less than (15) proofs of claim in a year may refer to Page 1 for the proper address to send claims to. Claims should be sent to the office in which the case has been assigned.

## Examining Claims

Claims filed prior to October 4, 2005 in Chapter 7, Chapter 11, and Chapter 12 cases, may be examined in the Clerk's Office. In Chapter 13 cases filed in the Albany, Athens and Macon divisions prior to October 4, 2005, the assigned Chapter 13 Trustee maintains the claims until dismissal or conversion of the case. The Chapter 13 Trustee shall make these claims available for inspection. Upon dismissal, conversion or closing, claims are returned to the Clerk and are placed in the case file. Claims filed prior to October 4, 2005, in Chapter 13 cases filed in the Columbus, Thomasville\* and Valdosta divisions, may be examined in the Clerk's Office in Columbus. All claims filed after October 4, 2005, may be examined in the Clerk's Office or electronically through PACER.

\*Beginning August 21, 2007, new cases were no longer assigned to the Thomasville division.

## Objections to Claims

- **GENERALLY:** Pursuant to §502(a) a claim or interest, proof of which is filed under §501, is deemed allowed unless a party in interest objects.

An objection to the allowance of a claim must be in writing and filed with the court. FRBP 3007. There is no prescribed form for filing an objection to a claim, but it should state the reason for objecting. Although the right to object to a claim is generally exercised by the trustee or debtor-in-possession, a party in interest, including a creditor of a general partner in a partnership that is a debtor in a case under chapter 7 may object to the allowance of a claim. 11 U.S.C. §502(a). *Section 213 of the Bankruptcy Reform Act amends section 502(b) of the Bankruptcy Code to add late filing of a proof of claim as a ground for objecting to the allowance of a claim.*

- **RESPONSE TIME:** Objections to claims shall be served pursuant to LBR 9004-1, LBR 9007-1 and/or LBR 2002-1(e). A respondent shall have 30 days to file a written response.
- **PROPOSED ORDER:** If the respondent to an objection to claim does not file a response within the time specified in the notice of the objection, the objecting party shall promptly send to the Court a proposed E-Order adjusted to the facts alleged in the objection. LBR 3007-1(b).
- **NOTICE OF TIME TO OBJECT:** The objecting party shall inform the respondent of the requirements of this rule by serving an appropriate notice that complies with the requirements of LBR 9004-1 and/or LBR 2002-1(e).
- **ADVERSARY PROCEEDING:** An objection to a claim usually initiates a contested matter pursuant to FRBP 9014. A party in interest shall not include a demand for relief of a kind specified in Rule

7001 in an objection to the allowance of a claim, but an objection to the allowance of a claim may be included in an adversary proceeding. FRBP 3007.

## Motions to Allow Late Filed Claim or Motions to Allow Post Petition Debt

When filing a motion to allow late filed claim or motion to allow post petition debt, prepare and file with the motion the following:

- (1) A Proof of Claim on behalf of the creditor;
- (2) Upload a proposed order;
- (3) If the motion is filed by a creditor and the debtor consents to the allowance of the claim, obtain the consent of the debtor's attorney **and** the trustee;
- (4) Appropriate certificate of service.

The trustee in Chapter 12 and 13 cases will determine if the claim can be paid through the debtor's plan. If so, the court will ordinarily enter the order without the necessity of a hearing if all parties agree. If the matter cannot be handled in accordance with these procedures, a hearing will be scheduled.

## Reconsideration of Claims

A party in interest is allowed to move for reconsideration of an order allowing or disallowing a claim. FRBP 3008.

# HOW ISSUES MAY BE RAISED IN BANKRUPTCY COURT

The term "case" in Bankruptcy Court has a much broader meaning than in the District Court or Appeals Court. It is an umbrella term which encompasses all that happens with respect to a debtor's estate after the initial petition is filed. Issues are raised in a bankruptcy case by motions or applications, however certain issues must be raised by the filing of an adversary proceeding/complaint.

## ADVERSARY PROCEEDINGS

Certain categories of relief may be granted in a Bankruptcy Court only through an adversary proceeding. In general, FRBP 7001 requires that an adversary proceeding be commenced when seeking one of ten specified types of relief:

- (1) To recover money or property,
- (2) To determine the validity, priority, or extent of a lien or other interest in property,
- (3) To obtain approval pursuant to §363(h) for the sale of both the interest of the estate and of a co-owner in property,
- (4) To object to or revoke a discharge,
- (5) To revoke an order of confirmation of a Chapter 11 or Chapter 13 Plan,
- (6) To determine the dischargeability of a debt,
- (7) To obtain an injunction or other equitable relief,

- (8) To subordinate any allowed claim or interest, except when subordination is provided in a Chapter 9, 11, 12 or 13 Plan,
- (9) To obtain a declaratory judgment relating to any of the foregoing, or
- (10) To determine a claim or cause of action removed pursuant to 28 U.S.C. §1452.

In addition to the ten actions listed in FRBP 7001, when a demand for relief specified in this rule, is joined with an objection to a claim, the objection becomes an adversary proceeding. FRBP 3007.

## Filing a Complaint

The first step in commencing an adversary proceeding is the filing of a complaint. FRBP 7003. The complaint must be filed with the Clerk in the district in which the bankruptcy case is pending, unless the venue provisions of 28 U.S.C. §1409 authorize the filing of the complaint in another district. FRBP 5005(a).

## Form and Caption of Complaint

The general format for a complaint is governed by FRBP 7010 and Rule 10 of the F.R.Civ.P. The caption of an adversary proceeding must conform substantially to Form No. 16D. FRBP 7010.

In re:

\_\_\_\_\_, Debtor

Bankruptcy Case No. \_\_\_\_\_

\_\_\_\_\_, Plaintiff

Chapter \_\_\_\_\_

V.

\_\_\_\_\_, Defendant

Adversary Proceeding No. \_\_\_\_\_

## Contents of Complaint

As each complaint is unique, there is no prescribed form for the body of the complaint. However, Rule 10 of the F.R.Civ.P. sets forth general requirements for all pleadings which should be followed in complaints:

**All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.**

Rule 8 of the F.R.Civ.P. applies to adversary proceedings through FRBP 7008. They set forth general requirements as to the content of the complaint including:

- (1) a jurisdictional statement, which shall contain a reference to the name, number, and chapter of the case under the Code to which the adversary proceeding relates and to the district and division where the case under the code is pending;
- (2) a short and plain statement of the claim showing that the pleader is entitled to relief;

- (3) a demand for judgment for the relief the pleader seeks; and
- (4) a statement regarding whether the proceeding is core or non-core and, if non-core, whether the pleader does or does not consent to the entry of final orders or judgments by the Bankruptcy Judge.

28 U.S.C. §157 distinguishes between “core” and “non-core” proceedings. Parties to an adversary proceeding are required to designate in their initial pleadings whether a proceeding is core or non-core. This designation is important to the judges and the Clerk’s Office in determining how to process and handle final orders and rulings of the court.

See Rule 8 of the F.R.Civ.P. in reference to rules of pleading defenses, affirmative defenses, and effect of failure to deny.

## **Adversary Cover Sheet**

When an adversary proceeding is not filed electronically, it must be accompanied by an Adversary Proceeding Cover Sheet, Form B-104. This form, issued by the Administrative Office pursuant to FRBP 9009, is designed to assist the Clerk in completing the adversary proceeding opening report form. This form may be obtained from the Clerk’s Office or from the Court’s web site. For authorized filers in the CM/ECF system, an adversary can be commenced without including a pdf image of a completed adversary cover sheet. For electronic filings, the use of a cover sheet is not prohibited, but one is not mandatory.

## **Numbers Assigned to Adversary Proceedings**

A separate adversary proceeding number is assigned to each adversary proceeding. The numbering system for adversary proceedings follows the same pattern as case numbers. Also, the initials of the judge assigned to the case are shown as a part of the number, i.e. 97-5045 JDW.

It is very important that the case number, the chapter number, and the adversary proceeding number be indicated on all adversary pleadings filed.

## **Amendments to Complaints**

A complaint may be amended once as a matter of course at any time before a responsive pleading is served, but any other amendments may be made only upon leave of court or by written consent of the adverse party. FRBP 7015; F.R.Civ.P. 15(a).

## **Filing Fee for Complaints**

The fee for filing an adversary proceeding is \$350.00 28 U.S.C. §1914(a).

There are some exceptions to the fee requirement. If the United States, other than a United States Trustee acting as a trustee, or a debtor, is the plaintiff, no fee is required. In a Chapter 11 or 12, the Debtor-In-Possession must pay the fee if the granting of the complaint will benefit the estate of the Debtor-In-Possession. The fee is not required if the granting of the complaint will benefit only the Debtor-In-Possession (child support, alimony, etc.). If a trustee is the plaintiff, the fee is only payable from the estate to the extent there is any estate realized.

## Time Limits for Filing Complaints

Complaints may be filed at any time during the pendency of the case, except complaints objecting to discharge under 11 U.S.C. §727, and certain complaints to determine dischargeability of debts under 11 U.S.C. §523(c). See FRBP 4007(b),(c) and (d). In a Chapter 7 liquidation case, a complaint objecting to the debtor's discharge under §727(a) of the Code shall be filed not later than 60 days following the first date set for the meeting of creditors. FRBP 4004(a). In a Chapter 11 reorganization case, such a complaint shall be filed not later than the first date set for the hearing on confirmation. FRBP 4004(a). A complaint to determine the dischargeability of any debt pursuant to §523(c) of the Code shall be filed not later than 60 days following the first date set for the meeting of creditors held pursuant to §341(a). These time limits are stated in the notice of the 341 Meeting of Creditors.

On motion of any party in interest, after hearing on notice, the court may for cause extend the time fixed for filing a complaint. The motion shall be made before such time has expired. FRBP 4004(b) and 4007(c).

## Issuance of Summons and Notice of Pre-Trial

Upon the filing of a complaint, the Clerk shall issue a summons. Rule 16 of the F.R.Civ.P., made applicable to adversary proceedings by FRBP 7016, sets forth procedures for scheduling and planning the course of events in an adversary proceeding. In most adversary proceedings the conference pursuant to Rule 16 is assigned upon issuance of the summons. The Clerk will issue all summons to the plaintiff's attorney. The plaintiff's attorney shall serve the summons along with a copy of the complaint.

## Service of Summons and Complaint

A summons is only valid for 7 days following its issuance. FRBP 7004(f). It is the responsibility of the plaintiff or the plaintiff's attorney to serve promptly the summons issued by the court and the complaint on the defendant(s). FRBP 7004(a); F.R.Civ.P. 4(a). The summons issued by the court and complaint must be served within 7 days of the issuance of the summons, and, if service is not effected within that time period, a new summons must be issued and served. FRBP 7004(f). The summons and complaint may be served anywhere in the United States. FRBP 7004(d). *Bankruptcy Reform Act of 1994, amended FRBP 7004 to provide that service on an insured depository institution in a contested matter or adversary proceeding shall be made by certified mail addressed to an officer of the institution unless:*

- (1) *The institution has appeared by its attorney, in which case the attorney shall be served by first-class mail;*
- (2) *the court orders otherwise;*
- (3) *the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.*

The summons issued by the court and complaint may be served in a variety of ways as set forth in FRBP 7004 and Rule 4 of the F.R.Civ.P., including electronic notification, first class mail service, personal service, and publication. If service is effected by the plaintiff by any authorized form of mail, service is complete upon mailing, not delivery by the Postal Service. FRBP 7004(f) and 9006(e).

**NOTE:** FRBP 7004 (9) requires that the debtor be served at the address shown in the petition or Statement of Affairs or to such other address as the debtor may designate in a filed writing and, if debtor is represented by an attorney, upon the debtor's attorney by any means authorized under Rule 5(b) F.R. Civ. P.

## Proof of Service

When service is completed, the plaintiff's attorney shall file a certificate of service with the Clerk.

## Responsive Pleadings

There are no official forms for responsive pleadings. As with all pleadings in an adversary proceeding the caption must conform to Form 16C. FRBP 7010. FRBP 7008 and 7012 and Rules 8 and 12 of the F.R.Civ.P. provide detailed guidance as to the presentation of defensive pleadings. One requirement is that the responsive pleading must admit or deny any allegation that the proceeding is core or non-core, and, if the response is that the proceeding is non-core, the pleading must include a statement that the party does or does not consent to entry of final orders or judgments by the Bankruptcy Judge. FRBP 7012(b).

If a complaint is duly served, the defendant shall serve an answer within 30 days after the issuance of the summons, except where a different time is specified by the court. The United States or an officer or agency thereof shall serve an answer within 35 days after issuance of the summons. Also, see FRBP 7012(a) for times fixed for filing responses to cross-claims, counterclaims, etc.

## Service and Filing of Pleadings

Rule 5 of the F.R.Civ.P. made applicable to adversary proceedings by FRBP 7005, governs the service and filing of every pleading subsequent to the original complaint. The general rule is that every pleading and every paper filed in a case must be served upon each of the parties unless the court orders otherwise.

If a party is represented by an attorney, service must be made upon the attorney unless the court orders service upon the party. Service may be by electronic notification, mail or by delivery of a copy as defined in Rule 5(b) of F.R.Civ.P.

**NOTE:** FRBP 7004(9) requires that the debtor be served at the address shown in the petition or Statement of Affairs or to such other address as the debtor may designate in a filed writing and, if debtor is represented by an attorney, to the attorney at the attorney's post office address.

All papers which must be served on parties shall be filed with the court either before service or "within a reasonable time thereafter." F.R.Civ.P.5(d). All pleadings shall be filed with the Clerk.

## Discovery

Discovery conducted in adversary proceedings shall be controlled by FRCP 5.

## Jury Trial (LBR 9015-1)

**AUTHORITY FOR BANKRUPTCY JUDGES TO CONDUCT JURY TRIALS:** Section 157 of Title 28 provides that if the right to a jury trial applies in an adversary proceeding before the United States Bankruptcy Court, it may be heard by a Bankruptcy Judge if specifically designated to do so by the District Court and if all the parties expressly consent to the jury trial being conducted by the Bankruptcy Judge. The United States District Court for the Middle District of Georgia, by order entered November 18, 1994, designated each of the Bankruptcy Judges of this court to conduct jury trials.



**APPLICABILITY OF CERTAIN FEDERAL RULES OF CIVIL PROCEDURE:** Rules 38, 39, and 47-51 F.R.Civ.P., and Rule 81(c) F.R.Civ.P. insofar as it applies to jury trials, apply in cases and adversary proceedings, except that a demand made under Rule 38(b) F.R.Civ.P. shall be filed in accordance with FRBP 5005.

**CONSENT TO HAVE TRIAL CONDUCTED BY BANKRUPTCY JUDGE:** If the right to a jury trial applies and a timely demand has been filed under Rule 38(b) F.R.Civ.P., the parties may consent to have a jury trial conducted by a Bankruptcy Judge under 28 U.S.C. §157(e) by jointly or separately filing a statement of consent no later than 30 days after the conclusion of the initial pretrial conference.

## DEFAULT JUDGMENTS

### Entry of Default

FRBP 7012(a) provides that the defendant to an adversary proceeding must serve an answer or motion within 30 days of the issuance of the summons by the court, unless the court prescribes a different time. If the United States or an officer or agency of the United States is a defendant, an answer must be served within 35 days of the issuance of the summons. FRBP 9006 provides that if the last day is a Saturday, Sunday or federal holiday, the deadline is extended to the next day following the Saturday, Sunday or federal holiday.

If the defendant serves neither an answer nor one of the motions prescribed by FRBP 7012(b) within the time fixed by FRBP 7012(a), the defendant is deemed to be in default. FRBP 7055 incorporates by reference Rule 55 of the F.R.Civ.P. This Rule provides that when the defendant is in default, the plaintiff may seek to have the Clerk enter the default on the court docket.

The Clerk is permitted to enter a default only upon being presented with an affidavit setting forth the requisite facts. In addition, for adversary proceedings filed in the Columbus division, a Request For Default Judgment and proposed order is required to be filed with the above affidavit. The facts to be included within the affidavit should normally include:

- a) Date of issuance of summons;
- b) Statement of whether the court fixed a deadline for the filing of an answer or motion, or whether the 30 or 35 day time limit applies;
- c) Date of service of the summons and complaint;
- d) Date of filing of an affidavit of service;
- e) Statement that no answer or motion has been received within the time limit fixed by the court or by FRBP Rule 7012(a);
- f) Statement that the defendant is not in the military service, as required by 50 U.S.C. Appendix §520. If the defendant is, or may be, in the military service, the defendant is afforded certain protections which must be addressed prior to the entry of default.
- g) Statement that defendant is not an infant or incompetent person.

If appropriate showing is made by the plaintiff that a default has in fact occurred, entry of default can be entered.

### Judgment by Default

Once, the Clerk has entered the Clerk's Entry of Default, the plaintiff may seek default judgment. See: Rule 55(b) of the F.R.Civ.P. for more complete details. Rule 55(b) of the F.R.Civ.P. provides two methods for obtaining a judgment by default:

- (a) If the complaint seeks a sum certain, the defendant is neither an infant nor an incompetent person, and the defendant has not served an answer or motion, the Clerk may enter a judgment for that amount upon receipt of an affidavit from the plaintiff setting forth the amount due. By sum certain, the rule means an amount that can be fixed by simple calculation or that can be set by documentation, such as an invoice. Merely because a party claims a specific amount, such as \$3 million for pain and suffering, does not make that an amount certain.
- (b) In all other instances, including a defendant who served an answer or motion and then fails to appear at a court hearing, default judgment must be entered by the court upon the plaintiff filing a motion or application for default judgment. If request is made for attorneys fees, the judgment must be entered by the court.

See: Rule 55(b) of the F.R.Civ.P. for more complete details. In the U.S. Bankruptcy Court for the Middle District of Georgia, the default judgment in ALL instances is entered by the court.

## Setting Aside the Judgment by Default

Rule 55(c) of the F.R.Civ.P. states that ". . . if a judgment by default has been entered [the court] may . . . set it aside in accordance with Rule 60(b) of the F.R.Civ.P.." Rule 60(b) authorizes a court to set aside a judgment on account of mistake, inadvertence, surprise, excusable neglect, newly discovered evidence, fraud, etc. A motion to set aside the default on these grounds must be made within a reasonable time, but not more than one year after the default judgment was entered and shall substantially conform to LBR 9013-1 and be accompanied by a notice of hearing and certificate of service.

## Motions for Summary Judgment

- **STATEMENT OF UNCONTESTED FACTS:** Upon filing any motion for summary judgment pursuant to FRBP 7056, the movant shall file and serve a supporting brief and a separate, short, and concise statement of the uncontested facts as to which the movant contends there is no genuine issue to be tried, including specific reference to those parts of the pleadings, depositions, answers to interrogatories, admissions, and affidavits that support such contention. LBR 7056-1(a).
- **RESPONSE:** The party or parties opposing a motion for summary judgment shall file their response with supporting brief and a separate, short, and concise statement of the material facts as to which it is contended that there exists a genuine issue to be tried, including specific reference to those parts of the pleadings, depositions, answers to interrogatories, admissions on file and affidavits that support such contentions. Any such response shall be filed and served within 21 days of service of movant's brief and Statement of Uncontested Facts. LBR 7056-1(b).
- **FACTS DEEMED ADMITTED:** All material facts set forth in the statement served by the movant may be deemed admitted unless controverted by the statement required to be served by the opposing party or parties. LBR 7056-1(c).
- **FAILURE TO COMPLY:** Failure to comply with this rule by the movant may result in denial of the motion. LBR 7056-1(d).

# MOTIONS

In many instances in bankruptcy cases, relief shall be requested by the filing of a motion. A motion, which is a request made to the court for an order or ruling, is usually written, but also may be made orally at a hearing. FRBP 9013 and 9014. Motions must be used to request an order from the court when no other form is specified under the Code or Rules. FRBP 9013. Motions filed pursuant to FRBP 9013 may be uncontested.

## Contents of Motions/Multiple Requests For Relief

The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought. FRBP 9013. Also, LBR 9004-1 states that motions for relief from stay may not be combined with other forms of relief, except those allowed by §362 and §1205 of the Code. Motions for relief from stay allowed by §1301 may be combined with motions pursuant to §362. Any waiver of the 30-day requirement of §362(e) of the Code by the movant shall be recited in the motion and set out in the title of the motion. Objections to confirmation of a Chapter 13 plan may not be combined with other requests for relief. Additionally, LBR 9013-1 requires that any motion that is filed and which may be granted without a hearing shall have a proposed order bearing a title that describes relief granted sent as an E-Order to the court's electronic filing system. If the motion requests alternative relief as allowed under LBR 9004-1(a), the order must dispose of all matters raised in the motion. All motions should indicate applicable code sections or FRBP that affect the granting or denial of the relief that is sought. All motions filed pursuant to this Rule shall be accompanied by a notice that substantially complies with the requirements of LBR 9004-1(b).

## Service of Motions

Every written motion other than one which may be considered ex parte shall be served by the moving party on the trustee or debtor-in-possession and on those entities specified by the rules or, if service is not required or the entities to be served are not specified by the rules, the moving party shall serve the entities the court directs. FRBP 9013. Also, keep in mind that in most instances it is necessary to serve motions upon the United States Trustee.

**NOTE:** FRBP 7004 (9) requires that the debtor be served at the address shown in the petition or Statement of Affairs or to such other address as the debtor may designate in a filed writing and, if debtor is represented by an attorney, upon the debtor's attorney by any means authorized under Rule 5(b) F.R. Civ.P.

## Form of Notices (LBR 9004-1)

When a hearing is specifically required for the matter being noticed, see LBR 9004-1 ( c ). All notices served shall substantially conform to the following directives:

- **METHOD OF SERVICE:** Every notice shall be set out as a separate document from any associated pleading except that a certificate of service may be combined with the notice. The notice may be served separately. If served with associated pleading, the notice shall be the first page or pages of the service packet. However, the notice may be combined with a short pleading if both can be contained on a single page. LBR 9004-1 (c)(1).
- **DESIGNATED AUTHORITY FOR A NOTICE:** The notice shall contain language that identifies the authority of the sender for originating the notice by indicating whether the notice is being sent by direction of the court or pursuant to a Local Bankruptcy Rule, Federal Rule of Bankruptcy Procedure,

or the Bankruptcy Code. The appropriate citation for any rule or code section shall be specified in the notice. LBR 9004-1 (c)(2).

- **IDENTITY OF SENDER AND COURT:** The notice shall clearly identify the sender by name, address, and telephone number. The notice shall also set out the name, mailing address, and phone number for the Clerk's Office. LBR 9004-1 (c)(3).
- **REQUIRED NOTICE CAPTION:** Each notice shall be captioned as it appears on any associated pleading or petition and shall substantially comply with the requirements of FRBP 9004(b). LBR 9004-1(c)(4).
- **MANDATORY LANGUAGE:**  
Notice of Motion or Objection Other Than Objections to Claims. (PLEASE SEE LBR 9004-1 (c)(5)(a) FOR MANDATORY LANGUAGE REQUIRED).  
Notice of Objections to Claims (PLEASE SEE LBR 9004-1 (c)(5)(b) FOR MANDATORY LANGUAGE REQUIRED)
- **NOTICE OF HEARING:** If a hearing is required to be held concerning any matter other than one provided for under LBR 9007-1(c), the notice of hearing shall be served with the motion on all interested parties and shall conspicuously include the language presented in LBR 9004-1 (c)(6).
- **NOTICE PERIOD:** The party preparing the notice shall insert the appropriate deadline for response that is applicable to the motion filed in accordance with the Court Hearing Scheduler Program (CHS).

## Motions For Relief from Stay

- **GENERALLY/FEEES:** A motion for relief from the automatic stay provided by §362 (a) of the Code must be made in accordance with FRBP 9014. FRBP 4001 (a)(1). A motion to terminate, annul, modify, or condition the automatic stay provided under §362(a) must be accompanied by a filing fee of \$176.00. The fee need not be paid if the motion is accompanied by the electronic submission of an order which specifies an agreement or stipulation to the termination, annulment, modification, or conditioning of the automatic stay, or when seeking relief from stay of actions against co-debtors under §1201 and §1301. Also, motions filed by a child support creditor or representative of such creditor who files a form that contains language detailing the child support, its status, and other characteristics as prescribed in §304(g) of the Bankruptcy Reform Act 1994 are exempt from payment of the filing fee.
- **TIME REQUIREMENTS/WAIVERS:** There are stringent time requirements related to a motion for relief from stay. The stay of any act against property of the estate under §362(a) expires as to the party making the request 30 days after a motion for relief is made unless the court before that time, after notice and hearing, orders such stay continued in effect pending the conclusion of, or as a result of, a final hearing and determination. 11 U.S.C. §362(e). If the hearing held within the 30-day period is a preliminary hearing, then the final hearing, must be concluded not later than 30 days after the conclusion of the preliminary hearing, unless the 30-day period is extended with the consent of the parties in interest or for a specific time which the court finds is required by compelling circumstances. 11 U.S.C. §362(e). When the court determines that the stay should be continued pending conclusion of a final hearing, it can only do so if "there is a reasonable likelihood that the party opposing relief from such stay will prevail at the conclusion of such final hearing." 11 U.S.C. §362(e). Motions for relief from stay are given special consideration in scheduling and calendaring so that the deadlines imposed by the Code and Rules are met. Hearings are assigned by the Clerk's Office within 30 days, if possible. Although not required, this court routinely requests that all motions for relief from stay be accompanied by a waiver of right to hearing within 30 days. LBR 9004-1(b). This waiver is requested to help facilitate scheduling matters for the court's calendar.

- **CONTENTS OF MOTIONS FOR RELIEF FROM STAY:** Motions seeking relief from the automatic stay as to property of the estate shall specify the relief requested and include the following: LBR 4001-1(a).
  1. A description of the security interest(s) claimed by the creditor in the subject property (“collateral”).
  2. The movant's estimate of value of the collateral and the basis of that valuation.
  3. A statement of the indebtedness claimed to be due and owing with an itemization showing principal and advances, accrued interest, attorney’s fees, and costs.
  4. A statement of the amount of any other secured claims against the collateral (if known), and whether any such claim is superior or inferior to the movant’s claim.
  5. When the relief requested is based upon a security interest in residential real property, a statement of the name, address, and telephone number of the individual or entity who shall have full authority to negotiate, amend, and modify all terms of the security instrument as provided in O.C.G.A. § 44-14-162.2(a) et seq.
  6. If relief is sought pursuant to §362(d)(1) of the Code for cause, including lack of adequate protection, a factual statement of the grounds for such relief.
  7. Motions seeking relief under §362(d) of the Code, shall comply with the requirements of LBR 9004-1(a)1 and shall include a notice of hearing pursuant to LBR 9004-1(c)6.
  8. Relief from stay allowed pursuant to §1301(d) can only be granted by order of the court.
  
- **AGREEMENTS PROVIDING FOR RELIEF FROM THE AUTOMATIC STAY OR FOR THE PROVISION OF ADEQUATE PROTECTION:** All motions for approval of an agreement to provide adequate protection, for the modification or termination of the stay provided in §362, for the use of cash collateral, or for the approval of an agreement between the debtor and an entity that has a lien or interest in property of the estate pursuant to which the entity consents to the creation of a lien senior or equal to the entity’s lien or interest in such property shall require the service on or consent of the following entities:
  1. In a Chapter 11 or a Chapter 9 case, any committee appointed by the United States Bankruptcy Trustee or the authorized agent for the committee, or, if no committee has been appointed, the 20 largest unsecured creditors contained in the list filed pursuant to FRBP 1007(d), the Trustee, any individuals or entities requesting notices pursuant to FRBP 2002(g), and any other individuals or entities that the Court may direct. LBR 4001-1(b)(1).
  2. In Chapters 7, 12, and 13, all agreements, as set out above, require the consent of the Trustee appointed in the case, unless the Trustee has been served with the agreement and the Trustee has expressly abandoned the asset, filed a report of no assets in a Chapter 7 case, or indicated in writing that the Trustee has no opposition to the motion. No further service on any other entity shall be required unless otherwise ordered by the Court. LBR 4001-1(b)(2).
  
- **PAYMENT OF SECURED CLAIMS AFTER MOTION FOR RELIEF IS GRANTED OR COLLATERAL SURRENDERED:** In a Chapter 13 case, after a motion for relief from stay has been

granted, or after confirmation of a plan or a modified plan that provides for surrender of secured collateral, the Chapter 13 Trustee is authorized, following written notice to any such creditor, to suspend payments on any claim filed by such creditor. Actual possession of the collateral by the creditor is not a prerequisite for the application of this Rule. After liquidation of the collateral the creditor may reinstate its right to receive payment on the claim by notifying the Chapter 13 Trustee in writing, with a copy to the Court, that it believes it is entitled to payment under the plan, and the creditor furnishes an accounting of all proceeds, if any, received from the sale of the collateral. LBR 4001-19(c).

## Special Procedures for Ex Parte Relief

LBR 4001-1-(d) provides special instructions concerning motions for ex parte relief as follows:

- A. Except in Chapter 11 Cases, if collateral securing a claim, including leased property, is a motor vehicle, trailer, boat, or an airplane, and if there is a contractual obligation by the debtor to provide collision and comprehensive insurance and the same is not in effect, then the creditor may file with the Court a motion for ex parte relief from the stay pursuant to §362 (f) to obtain possession of the collateral or leased property.
2. The Bankruptcy Court may, in its discretion, apply this Rule to a Chapter 11 case.
3. Any motion for ex parte relief from the stay under this Rule shall be verified in accordance with FRBP 9011(e) and shall:
  - A. Include the following:
    - (1) A description of the collateral or leased property;
    - (2) A statement of the amount of the claim and the basis on which the claim is secured;
    - (3) An affidavit setting forth the basis on which the movant believes that the collateral or leased property is not insured with full collision and comprehensive insurance;
    - (4) A statement that the movant or its attorney has given or attempted to give oral notice to the debtor's attorney or the debtor, if the debtor is not represented, and to the case Trustee, that the motion is being filed, and;
    - (5) A statement specifying the failure, if any, of the debtor to produce proof of insurance at the time of the § 341(a) Meeting of Creditors as required by LBR 4070-1.
  - B. Be accompanied by a proposed order which shall provide that:
    - (1) The debtor or Trustee is prohibited from using the collateral or leased property unless and until adequate evidence of full collision and comprehensive insurance is presented to the movant or movant's counsel;
    - (2) The debtor or Trustee, whichever is in actual physical possession of the collateral or leased property, shall notify the movant or movant's counsel of the location of the collateral;
    - (3) The debtor or Trustee, whichever is in actual physical possession of the collateral or leased property, shall surrender it to the movant within 72 hours, unless within that time the movant

or movant's counsel is provided with adequate evidence of collision and comprehensive insurance or, the debtor or Trustee requests a hearing concerning same;

(4) The movant is authorized to take physical possession of collateral or leased property required to be surrendered under this Rule, and to hold same, at the movant's risk. The movant shall not dispose of the collateral or leased property unless and until the automatic stay is modified, terminated, or expires as a matter of law. If the debtor provides adequate evidence of full collision and comprehensive insurance prior to the expiration or termination of the automatic stay, then the movant shall return the property to the debtor;

(5) The movant or movant's counsel shall serve copies of the motion and proposed order promptly on the debtor, the debtor's attorney, and the Trustee, and shall provide telephonic notice to the debtor's attorney and, if the Trustee is in actual physical possession of the property, to the Trustee.

### **Negotiation of Modifications to Mortgages on Residential Real Estate and the Automatic Stay**

The stay as provided under § 362 of the United States Bankruptcy Code shall not operate to prevent debtors and creditors from voluntarily re-negotiating the terms of an existing mortgage on residential property in a case in this court. The debtor or creditor is free to decline entering into any such negotiations and is empowered to terminate the negotiations at any time invoking the full protection of the stay under § 362. In a Chapter 13 case, any modification may be agreed to by the debtor and the creditor without Court approval, but shall be immediately reported to the case Trustee and the debtor shall file a modified plan as needed or as requested by the Trustee. LBR 4001-1(e)

### **Automatic Termination of the Stay Pursuant to Section 362(c)(3)**

Upon the filing of a motion by a party in interest pursuant to Section 362(c)(3)(B), the court hereby authorizes the extension of the stay until the court enters a final order on the motion. The notice of the motion shall be deemed completed upon service on all parties in interest, and said notice shall be prepared, filed, and served pursuant to LBR 9004-1(c)(5). A party at interest may request an expedited hearing at any time following service of the motion. LBR 4001-1(f)

## **Lien Avoidance Motions**

A proceeding by the debtor to avoid a lien or other transfer of property exempt under §522(f) of the Bankruptcy Code should be by motion pursuant to FRBP 9014. FRBP 4003(d). The motion to avoid lien is one of the most common motions filed by a debtor.

In a Chapter 7, 11, or 12 case, in order to avoid a lien pursuant to 11 U.S.C. §522(f), the debtor shall submit the motion and certificate of service with a proposed e-order. LBR 9013-1.

Motions to avoid liens under §522(f) of the Code shall be served with a notice to respond that complies with requirements of LBR 9004-1. The motion shall be served pursuant to LBR 9007-1 or LBR 2002-1(e). In Chapter 13 cases, the debtor may propose to avoid liens in the Chapter 13 plan. The plan shall specify the creditors by name whose liens are affected by such provisions in the plan and such provisions shall only apply to those liens that can be avoided under Section 522(f). Any other liens other than those that are voidable under Section 522(f) shall not be included in such lien avoidance provisions in the Chapter 13 plan.

A proposed e-order shall be uploaded to the court's electronic docketing system.

If no objection to the granting of the relief sought is filed and served within 21 days from the date of the motion and notice (as evidenced by certificate of service), the proposed order may be entered without

further action. If an objection is served and filed within 21 days after the date of service in a Chapter 7, 11, or 12 case, the scheduled hearing will be held.

## APPLICATIONS

There are a number of proceedings under the Code that involve no obvious adverse parties and that require only judicial consideration and determination by the application of the relevant Code or Rule. They generally are initiated by application or notice, rather than by complaint, as in adversary proceedings, or motions, as in contested matters. Applications may only be used when the Code or Rules so specify. The Rules provide that the following requests be made by application:

- (1) Application for permission to pay filing fees in installments. FRBP 1006(b)(1).
- (2) Application for appointment of creditors' committee organized before the order for relief. FRBP 2007(a).
- (3) Application for employment of professional persons. FRBP 2014(a) & LBR 2014-1.
- (4) Application for compensation for services rendered and reimbursement of expenses. FRBP 2016(a) and LBR 2016-1.
- (5) Application to shorten period of notice. FRBP 9006(d).

## Notice and Hearing Requirement

Of all the proceedings initiated by an application, the only matter for which the Code and Rules expressly require notice and an opportunity for hearing is the application for compensation for services rendered and reimbursement of expenses. 11 U.S.C. §330(a). Applications for Interim Compensation of one thousand dollars or less shall be served upon the debtor and any trustee appointed in the case, and upon the United States Trustee. All Applications for Interim Compensation that exceed one thousand dollars shall be served upon the debtor, any trustee appointed in the case, and the United States Trustee. A notice of filing of the application shall be served upon all creditors in the case. All Applications and notice of filing of the application shall be accompanied by the appropriate notice of the time to respond and the pending hearing date as required by these Rules. LBR 2016-1(c).

LBR 2016-1 states that upon dismissal or conversion of a Chapter 13 case before confirmation of the debtor's plan, and prior to the Chapter 13 Trustee refunding any funds on hand to the debtor, the trustee shall disburse the funds on hand in the following priority:

1. The Chapter 13 Trustee shall pay any unpaid portion of the filing fee;
2. The Chapter 13 Trustee shall be allowed to retain up to \$100.00 as an administrative expense without further motion or order of the Court.
3. The Chapter 13 Trustee is authorized to pay from the remaining funds on hand an attorney fee of \$800, less any fee paid as disclosed in the FRBP 2016 disclosure, to the attorney for the debtor, without any further motion, application, or order of this Court.

If the chapter 13 trustee has cause to believe the amount of \$800 is inappropriate, the chapter 13 Trustee shall file a request with the court to reduce the amount to be paid pursuant to this Rule.



If the attorney for the debtor requests a fee in excess of \$800, the attorney shall file an attorney fee application.

Some matters are determined ex parte without notice to the opposing parties. Generally applications to pay filing fees in installments and motions to shorten the period for a notice of motions are handled ex parte. The notice which is to be given for other proceedings initiated by application may be determined by the court pursuant to FRBP 2002(m).

## Objections

In the event there is an objection to a proceeding initiated by application, an actual dispute would be created and the procedures under FRBP 9014 would apply.

## APPEALS

### Manner of Taking Appeal

An appeal from a final judgment, order, or decree of a Bankruptcy Judge to the District Court shall be taken by filing a notice of appeal with the Clerk within the time allowed by FRBP 8002. FRBP 8001(a). The notice of appeal shall:

- 1) Conform substantially to the appropriate official form;
- 2) Contain the names of all parties to the judgment, order or decree appealed from and the names, addresses and telephone numbers of their respective attorneys;
- 3) Be accompanied by a filing fee of \$298.00. This amount includes a \$5.00 fee for filing the notice of appeal and a \$293.00 fee for docketing a proceeding on appeal;

### Time for Filing Notice of Appeal

The notice of appeal shall be filed with the Clerk within 14 days of the date (see FRBP 9006 for computation of time) of the entry (the date the judgment, order or decree was actually signed or mailed) of the judgment, order, or decree appealed from. FRBP 8002(a). The Bankruptcy Judge may extend the time for filing the notice of appeal by any party for a period not to exceed 21 days from the expiration of the time otherwise prescribed if the requirements set forth in FRBP 8002(d) are met.

### Expedited Appeal

There may be a need for expedited decisions in some appeals from the Bankruptcy Court to the District Court. Any party requesting expedited treatment of an appeal under these Rules shall file with the Clerk of the Bankruptcy Court a request for expedited treatment that substantially conforms with the **CLERK'S INSTRUCTIONS**. LBR 8010-1(b).

### Designation of Record and Statement of Issues

Within 14 days after filing the notice of appeal, the appellant shall file with the Clerk and serve on the appellee a designation of the items to be included in the record on appeal and a statement of the issues to be presented. Within 14 days after the service of the statement of the appellant, the appellee may file and serve on the appellant a designation of additional items to be included in the record on appeal. FRBP 8009.

Parties designating items as part of the record on appeal **shall provide copies of the items to the Clerk**. If party fails to provide the required copies, the Clerk shall prepare copies at the party's expense. FRBP 8009. The Clerk transmits a copy of the record on appeal and will retain the original papers. FRBP 8010.

It is not sufficient to designate the record as "the entire file" or simply to say "omit nothing from the record." By order of the United States District Court, the record must contain an itemization of the documents to be included. You may access the electronic docket report or request a copy of the docket report from the Clerk to aid in designating the record on appeal.

Failure of the appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is grounds only for such action as the District Court deems appropriate, which may include dismissal of the appeal. FRBP 8004.

## Requesting Transcripts

If a party designates a transcript as part of the record, the party should immediately, after the filing of the designation, request a transcript and make satisfactory arrangements for payment of its cost. If the transcript cannot be completed within 30 days of receipt of the request, the recorder should seek an extension of time from the Clerk and the action of the Clerk should be entered in the docket and parties notified in accordance with FRBP 8010(a).

**NOTE:** Please see section entitled “**Transcripts and Duplicate Tapes/Audio CDs of Proceedings**” for procedures on transcript, tape and Audio CD ordering.

## Duty of Clerk to Transmit Record

When the record is complete for purposes of appeal, the Clerk shall transmit it forthwith to the Clerk of District Court. All parties will be notified when the record on appeal is transmitted to the District Court for docketing. FRBP 8010(b).

In addition to the requirements under FRBP 8003(d), upon the failure of an appellant to properly file a designation of record and issues on appeal as required by FRBP 8009, the Clerk of the Bankruptcy Court shall prepare and transmit a skeletal record consisting of the order being appealed, the notice of appeal, and any documents filed after the notice of appeal that relate to the appeal. LBR 8010-1(a).

## Briefs

The procedure for filing briefs is directed by the District Court Clerk. Pursuant to FRBP 8018, unless the District Court excuses the filing of briefs or specifies different time limits:

- 1) The appellant shall serve and file a brief with the District Court Clerk within 30 days after entry of the appeal on the District Court's docket.
- 2) The appellee shall serve and file a brief with the District Court Clerk within 30 days after service of the brief of appellant. If the appellee has filed a cross appeal, the brief of the appellee shall contain the issues and argument pertinent to the cross appeal, denominated as such, and the response to the brief of the appellant.
- 3) The appellant may serve and file a reply brief within 14 days after service of the brief of the appellee, and if the appellee has cross-appealed the appellee may file and serve a reply brief to the response of the appellant to the issue presented in the cross appeal within 14 days after service of the reply brief of the appellant. No further briefs may be filed except with leave of the District Court.

## Motions for Leave to Appeal

FRBP 8004 specifies procedures for appealing from an order of a Bankruptcy Judge that is interlocutory (an order that does not finally dispose of the action). The party seeking leave to appeal must file a motion for leave to appeal. Upon the filing of the motion, accompanied by certificate of service, the Clerk's Office will docket and monitor the motion, and after the response time of 14 days after service of the motion has expired, the motion for leave to appeal and any response will be transmitted to the District Court Clerk for disposition.

A movant seeking leave to appeal shall include a brief argument as to why the judge should enter a certification that in the judge's opinion the order being appealed involves:

A controlling question of law as to which there is substantial ground for difference of opinion; and  
LBR 8004-1

That an immediate appeal from the order may materially advance the ultimate termination of the litigation.  
LBR 8004-1

Any response to the motion filed by an adverse party shall include any argument in opposition to the court certifying the appeal as outlined above. LBR 8004-1(b)

The certification of the Bankruptcy Court will not bind the District Court which in its discretion may permit an appeal to be taken or deny the motion as that court deems appropriate. LBR 8004-1(c)

## Motions for Stay Pending Appeal

FRBP 8010 addresses how to proceed with a motion for stay pending appeal. A motion for a stay of the judgment, order or decree of the Bankruptcy Court, for approval of a supersedeas bond, or for other relief pending appeal must ordinarily be made in the first instance in the Bankruptcy Court. The Bankruptcy Court may suspend or order the continuation of other proceedings in the case or make any other appropriate order during the pendency of the appeal on such terms as will protect the rights of all parties in interest. A motion for stay may be made in the District Court and not the Bankruptcy Court, but the motion must show why relief was not obtained from the Bankruptcy Court.

## Dismissal of an Appeal

Procedure for dismissal of an appeal is set forth in FRBP 8023.

The Clerk of the district court or BAP must dismiss an appeal if the parties file a signed dismissal agreement specifying how costs are to be paid and pay any fees that are due. An appeal may be dismissed on the appellant's motion on terms agreed to by the parties or fixed by the district court or BAP.

## REMOVAL AND REMAND

Removal in bankruptcy is the transfer of claims or causes of action in civil actions pending in a state court or another federal court in a state in which the civil action is pending. 28 U.S.C. §1452.

## Removal is Initiated by Filing a Notice of Removal

Unless removal actions are excluded from the District Court's standing order of referral to the Bankruptcy Court, the removal process begins by the filing of a notice of removal with the Bankruptcy Clerk. The filing should be done within the state or federal court's district and division in which the civil action is pending. FRBP 9027(a). If removal actions are excluded from the standing order of referral, all of the filing discussed in this section should be with the Clerk of the District Court.

**NOTE:** In the Middle District of Georgia, the order of referral does not exclude removals.

The notice of removal shall be signed pursuant to FRBP 9011, and contain a short and plain statement of the facts which entitle the party filing the notice to remove, contain a statement that upon removal of the claim or cause of action the proceeding is core or non-core, and if non-core, that the party filing the notice does or does not consent to entry of final orders or judgments by the Bankruptcy Judge, and be accompanied by a copy of all process and pleadings filed in the court being removed. FRBP 9027(a)(1).

## Fee Required for Removal

Notice of removal shall be accompanied by the same fee as required for filing an adversary proceeding. If the notice of removal is not filed electronically, an adversary cover sheet is required.

## Time for Filing Notice of Removal

If the claim or cause of action in a civil case is pending when a case under the code is commenced, notice of removal may be filed only within the **LONGEST** of:

- (a) 90 days after the order for relief;
- (b) 30 days after entry of an order terminating a stay, if the claim or cause of action has been stayed under §362 of the Code; or
- (c) 30 days after a trustee qualifies in a chapter 11 reorganization case, but not later than 180 days after the order for relief. FRBP 9027(a)(2).

If a case under the code is pending when a claim or cause of action is asserted in another court, a notice of removal may be filed within the **SHORTER** of:

- (a) 30 days after receipt, through service or otherwise, of a copy of the initial pleading setting forth the claim or cause of action sought to be removed; or
- (b) 30 days after receipt of the summons if the initial pleading has been filed with the court, but not served with the summons. FRBP 9027(a)(3).

## Notice of Removal

The party filing the notice of removal must serve a copy of the notice on all parties to the removed claim or cause of action promptly after the filing of the notice. FRBP 9027(b).

## Filing of Copy of Notice with Court from Which Removal is Being Effected

The party filing the notice of removal must also file a copy of the notice with the Clerk of Court from which the claim or cause of action is removed promptly after the filing of the notice. FRBP 9027(c).

## When Removal Effected

Removal is effective upon the filing of the copy of the notice of removal with the Clerk of Court from which the claim or cause of action is removed. No formal act or order of the bankruptcy court is required. FRBP 9027(c).

## Motions for Remand

Motions for remand of a removed claim or cause of action must be filed with the Bankruptcy Clerk and served on the parties to the removed claim or cause of action. FRBP 5005(a).

Unless a District Court Judge orders otherwise, a motion for remand should be determined by the Bankruptcy Judge. FRBP 9027(e).

# REAFFIRMATION AGREEMENTS

A reaffirmation agreement is a debtor's agreement with a creditor to reaffirm the debtor's obligation to repay a debt that would otherwise be dischargeable. A common example of the type of debt involved in a reaffirmation agreement is the note on a debtor's automobile.

A reaffirmation agreement, to be enforceable, must be made before the granting of a discharge and filed with the court. 11 U.S.C. §524(c)(1)(3). The Bankruptcy Code requires that the agreement advise the debtor, clearly and conspicuously, that the agreement may be rescinded at any time prior to discharge or within 60 days after the filing of the agreement with the court, whichever is later, by giving notice of rescission to the creditor holding the claim. 11 U.S.C. §524(c)(2). *The Bankruptcy Reform Act of 1994 amended §524(c) of the Bankruptcy Code by adding new subsections which require the Reaffirmation Agreement to contain an explicit statement advising the debtor that the agreement is not required by either bankruptcy or non-bankruptcy law.*

In any case commenced on or after October 17, 2005, no reaffirmation agreement will be enforceable unless it complies with the following:

- (1) A reaffirmation agreement shall include a certification by debtor's attorney if the attorney assisted in the negotiation of the reaffirmation agreement. The certification shall include all the requirements of §524(c)(3). LBR 4008-1(1)
- (2) All disclosures prescribed by §524 shall be contained in the reaffirmation agreement. LBR 4008-1(2)
- (3) The filing of the agreement shall comply with FRBP 4008. LBR 4008-1(3)
- (4) If a reaffirmation agreement does not contain a certification from debtor's attorney or the attorney indicates that the agreement will create an undue hardship on the debtor, the agreement is not enforceable

unless the Court approves the agreement. The debtor or creditor shall file a separate motion for Court approval. Any such motion shall be filed prior to the entry of the order of discharge. The Court, after a hearing, shall issue an appropriate order on the reaffirmation agreement. LBR 4008-1(4)

(5) No reaffirmation agreement filed after the entry of the order of discharge shall be enforceable unless the agreement was entered into prior to the discharge and contains the §524 (c)(3) certificate of the debtor's attorney LBR 4008-1(5).

### III. MISCELLANEOUS INFORMATION

#### Discharge of Debtor - When Granted

Discharges in Chapter 12 and Chapter 13 cases are granted when debtor completes payments under a confirmed plan. 11 U.S.C. §1228; 11 U.S.C. §1328.

In Chapter 7 cases, discharges are granted after the time for filing objections to discharge expires, provided there are no objections pending. 11 U.S.C. §727; FRBP 4004 (c)(1).

The court shall delay entry of the order of discharge as provided by FRBP 4004(c)(2) for 30 days and shall grant only one additional extension requested by motion within the 30 days. LBR 4004-3.

The order confirming plan operates as a discharge in Chapter 11 cases except in the case of an individual chapter 11 debtor. 11 U.S.C. §1141.

#### Discharge Hearings

Discharge hearings are no longer required by the Bankruptcy Code or Rules except for court approval of reaffirmation agreements. *Section 524(d) of the Bankruptcy Code was amended by the Bankruptcy Reform Act of 1994 to require the court to hold a discharge hearing and to advise the debtor of the consequences and effects of such a reaffirmation agreement only if the debtor was not represented by an attorney during the negotiating of the agreement.* Therefore, discharge hearings will be scheduled only when necessary. If hearing is scheduled, the debtor must appear at the hearing and the court must inform the debtor that the agreement is not required by law and of the legal effect and consequences of the agreement. 11 U.S.C. §524(d)(1). The court, after a hearing will issue an appropriate order on the reaffirmation agreement. LBR 4008-1

#### Exemptions/Lien Avoidance

The law permits a debtor to claim certain property as exempt to the exclusion of creditors. This is part of the "fresh start" approach.

The Bankruptcy Code of 1978 contains itemized exemptions that may be claimed by individual debtors. However, it also gave each state the right to opt out of federal exemptions and set up its own exemptions. Georgia passed such a law and the exemptions set up by the state of Georgia in Georgia Code §44-13-100 are the only exemptions available to Georgia residents. Debtors must claim and itemize their exemptions in Schedule C.

Pursuant to LBR 4003-1, Schedule C shall contain the following:

1. A detailed list of all property or assets claimed as exempt by the debtor.
  2. Each asset's value shall be stated in dollar amounts. If the value of any asset claimed to be exempt is not known, the debtor shall state the exemptible sum in dollars.
  3. Exemptions shall be limited to the dollar amount claimed as exempt even if the asset exempted is later discovered to have had a greater value than the amount listed in the schedules.
  4. If exempting future proceeds of an unliquidated claim or of a cause of action, the debtor shall fully describe any such claim or cause of action.
  5. If Schedule C is amended, notice to all parties in interest in the case shall be sent by the debtor.
- LBR 4003-1.

The trustee or any party in interest has the right to object to the exemptions claimed by the debtor within 30 days after the conclusion of the meeting of creditors, or the filing of an amendment to the list. Objections must be in writing with copy served on the trustee, the debtor and the debtor's attorney. FRBP 4003(b).

Exempt property is put beyond the reach of creditors in order to preserve and protect the debtor's fresh start. If a lien impairs a debtor's exemption, the debtor may cancel the lien if it is a judicial lien, usually on real estate, or a lien that is a "nonpossessory, nonpurchase money security interest" in household goods, books or tools of trade or health aids for the debtor or debtor's dependents. Automobiles and motor vehicles are generally excluded from lien avoidance.

Motions to avoid liens under § 522(f) shall be served with a notice to respond that complies with requirements of LBR 9004-1. The motion shall be served pursuant to LBR 9007-1 or LBR 2002-1(e). In Chapter 13 cases, the debtor may propose to avoid liens in the Chapter 13 plan. The plan shall specify the creditors whose liens are affected by such provisions in the plan. LBR 9007-1. LBR 4003-2 and/or LBR 2002-1(e).

## Subpoenas to Witness in Bankruptcy Matters

Amendments to F.R.Civ.P. 45, which were effective December 1, 1991, and are applicable to bankruptcy cases pursuant to F.R.Civ.P. 9016, significantly changed subpoena procedures for all subpoenas, including those for depositions.

The subpoena forms are now used for all purposes. It is no longer necessary that subpoenas be issued by the Clerk, although the Clerk still has authority. A subpoena may be issued by attorneys as officers of the court.

Attorneys are authorized to issue subpoenas in the name of the court in which they are authorized to practice, and in the case of a deposition or a production of documents taking place in another district, in the name of the court where the deposition or production is to take place.

It is not required that the attorney be a member of the bar or admitted pro hac vice in the district in whose name the subpoena is issued, so long as the deposition or production pertains to a primary action in a court in which the attorney is authorized to practice.

The requirement that a subpoena be issued under seal is abolished. When a subpoena is issued, the only requirement is that it be signed.

Proof of service of the subpoena is required to be filed only when necessary. Presumably, this would happen only when a dispute arises.

The Clerk's Office will provide blank forms of subpoenas to all attorneys who request them. There are now three forms: Subpoena in an Adversary Proceeding, Subpoena in a Case under the Bankruptcy Code, and Subpoena for Rule 2004 Examination.

Adversary subpoenas and case subpoenas shall also be used for taking depositions, as appropriate.

## Archived and Closed Files

The Clerk's Office has a limited amount of storage space for closed bankruptcy case files, adversary files, and bankruptcy docket sheets. The Clerk's Office strives to retain locally closed paper files for two years after closing; all other paper files are shipped to the Federal Records Center (FRC), 4712 Southpark Boulevard, Ellenwood, GA 30294. If a closed paper file has been shipped to the FRC, it will be necessary for the party requesting the file to pay a \$53.00 archive retrieval fee before the file can be ordered from the FRC. All requests for closed paper files should be made in writing to the Clerk's Office. Please note that a file ordered from the FRC for viewing or copying will be returned to the FRC.

The FRC has entered into a courtesy agreement with the courts whereby it will accept mail requests and telephone requests for photocopies of personal bankruptcy case files only. Also, the FRC will provide counter service to the public for reviewing bankruptcy files in lieu of returning the file to the court. Please contact the court for information regarding the ordering of files from the FRC.

Electronic case summaries, docket and claims information may be obtained through the PACER service. Computers in the public area of the Clerk's Office in Macon and Columbus may be used without charge, however a fee may be assessed if printed pages are needed.

## Reopening Cases (FRBP 5010)

Filing fees prescribed by 28 U.S.C. § 1930(a) must be collected when a Bankruptcy Code case is reopened, unless the reopening is to correct an administrative error or for certain limited actions related to the debtor's discharge.

If a Bankruptcy Code case is reopened for any other purpose, the appropriate fee to be charged is the same as the filing fee in effect for commencing a new case on the date of reopening.

A motion to reopen the case shall substantially conform to LBR 9013-1 and be accompanied by a notice of hearing and certificate of service. The filing fee is due AT THE TIME THE MOTION TO REOPEN IS FILED.

Appointment of Trustee in reopened cases: FRBP 5010 provides: "A case may be reopened .... pursuant to §350(b) of the Code. In a Chapter 7, 12, or 13 case, a trustee shall not be appointed by the United States Trustee unless the court determines that a trustee is necessary ...." Motions to reopen cases should include a statement regarding the necessity for a trustee to be reappointed if the motion is granted.

The case number assigned to the bankruptcy case when it was originally filed is used when the case is reopened.

If the moving party anticipates filing a subsequent proceeding (complaint, etc.), the case must be reopened via entry of an order prior to the court entertaining other documents.

Usually a "Motion to Reopen" should be filed if the case has been CLOSED. A "Motion to Vacate or Reconsider" should be filed if the case has only been DISMISSED and not statistically closed. There is a



difference between dismissal of a case and closing. Please check PACER, VCIS or contact the court directly to determine whether the case is closed.

## Court Reporting

All federal court proceedings must, by law, be recorded verbatim. Verbatim records of court proceedings are an important part of our legal system because, among other things, they provide a basis for rulings by higher courts in instances in which the outcome of a particular trial is appealed by either side. If a case is appealed, a transcript may be required from the record that was taken in court at the time of the trial. Bankruptcy Judges have the option of using contract reporters or electronic court recorder operators (ECROs). The Bankruptcy Court, Middle District of Georgia uses ECROs. There are a number of steps attorneys can take to facilitate record taking in the courtroom:

1. Give one of your business cards to the ECRO.
2. Give the ECRO a complete list of witnesses you will call during the proceeding.
3. When speaking on the record, make certain that you talk directly in front of a microphone.
4. At the beginning of the proceedings, identify yourself at a microphone and spell your name for the record.
5. Make certain that all witnesses you call also identify themselves clearly and spell their names.
6. Make certain that verbal responses are elicited from all witnesses, or that some audible indication be made by you through the microphone.
7. If any of your witnesses will present testimony containing unusual or technical vocabulary, prepare a list of such names and terms for the ECRO.

## Transcripts and Duplicate Tapes/Audio CDs of Proceedings

Requests for copies of audio CDs, tapes and transcripts for cases heard by the court shall be made to the deputy Clerk designated below or to the court ECRO. The estimated cost of the transcript will be provided by the ECRO and must be paid in advance of its preparation. A fee of \$30.00 per audio CD or tape duplicated must be paid to the Clerk of Court in advance.

Requests for transcripts of hearings, copies of tapes or audio CDs should be directed to:

**Rhonda Thomas, ECRO/Courtroom Deputy 478-749-6813**

<b>Transcript Rates are:</b>	<b><u>Original</u></b>	<b><u>1st copy</u></b>	<b><u>Additional Copies</u></b>
Ordinary (30 day)	\$3.65 per page	\$ .90 per page	\$.60 per page
14-Day	\$4.25 per page	\$ .90 per page	\$.60 per page
Expedited (7 day)	\$4.85 per page	\$ .90 per page	\$.60 per page
Daily	\$6.05 per page	\$1.20 per page	\$.90 per page

Electronic Public Access to Digital Audio - \$2.40

Prices are offered for general information only and subject to change. Please contact the persons named above for actual estimate of charges to apply.

Transcripts at the ordinary rate can be delivered within 30 days, and expedited transcripts within 7 days, from payment of deposit.

## **Attorneys Duties**

The following is pursuant to LBR 9011-1.

1. Attorneys practicing in the Bankruptcy Court for the Middle District of Georgia are expected to be available to personally represent the interests of their clients in matters before the court. The Georgia State Bar Rules regarding appearance conflicts do not apply to this Court.
2. If an attorney cannot attend a hearing or trial, the attorney must make arrangements to protect the client's interest at the hearing in one of the following ways:
  - A. Engage substitute counsel to represent the client. The substitute counsel must be familiar with the case and competent to represent the client in the case. The client must consent to the substitution.
  - B. Obtain a continuance. Contact opposing parties and request a continuance of the matter. If a request for continuance is refused by any party, file a motion for continuance and request an expedited hearing on such motion before the beginning of the period of absence with adequate notice of the hearing to opposing parties.
3. If an attorney anticipates an extended absence for any reason and may require accommodation for previously unscheduled hearings, the Court will accommodate the attorney on terms as follows:
  - A. The attorney must request such accommodation by letter delivered to the Clerk of Court in advance of the planned absence.
  - B. The request for accommodation must designate another member of the bar of this Court who has agreed to act as substitute counsel in matters scheduled during the attorney's absence. Such a designation must include the name, address, and telephone number of substitute counsel.
  - C. If the request for accommodation is deemed reasonable, the Court will attempt to avoid scheduling routine matters during the period of absence. If an expedited matter must be scheduled during the period of absence, the Court will notify the designated substitute counsel.
  - D. If the request for accommodation is deemed unreasonable, the Court will advise counsel accordingly.
4. Accommodations for emergency absences shall be made on a case-by-case basis.

## **Attorney Information**

All pleadings and orders tendered to the court by an attorney shall state the attorney's name, assigned State Bar number, current office address, telephone number, and e-mail address. The e-mail address shall be the address used to register as a filing user of the Court's electronic filing system. The information shall be placed on the document in immediate proximity to the attorney's signature. LBR 9011-1(b).

## Withdrawal of Counsel

Pursuant to LBR 2091-1, any attorney or law firm who has made an appearance in any case in this Court on behalf of an interested party shall continue to represent that party in the case until excused by the Court. An attorney or law firm, having filed a petition or other pleading on behalf of a debtor, shall represent the debtor in any contested matters or adversary proceedings that are filed in the case. Upon request by motion with notice given pursuant to LBR 9007-1 or LBR 2002-1(e), the Court will consider excusing the attorney from further representation for cause shown.

## Courtroom Practice and Procedures

Attorneys practicing before the court are expected to appear before the court at all prescribed times, to be on time, to come prepared and to possess a working knowledge of the Bankruptcy Code, Federal Rules of Bankruptcy Procedure, Federal Rules of Civil Procedure, Federal Rule of Evidence, and the Local Rules and General Orders of this court.

To avoid being interrupted by the court's electronic court recorder operator/contract reporter, it will be necessary for the attorney to state his/her full name for the record for each case where an appearance is necessary. Attorneys should address the court or examine witnesses at the podium or at the microphone at the counsel table.

All pleadings presented to the court must legibly reflect the attorney's name, mailing address, phone number and Georgia State Bar number, if the attorney is a member of the State Bar of Georgia. It would also be extremely helpful to the court if the pleadings were filed several days prior to the court hearing so that the pleadings could be processed for docketing, and most importantly reviewed by the judge prior to hearing. Filing pleadings on the day of the hearing or in the courtroom at the hearing can cause undue delays and confusion, particularly on days where many chapter 13 cases are scheduled.

Attorneys who plan to introduce exhibits in court should bring extra copies for other counsel and any witnesses. The original introduced exhibit is for the judge to view during the hearing or trial.

Attorneys should advise their clients of the professional attire dress code which requires all persons entering the United States Courtrooms for the Middle District of Georgia as spectators or participants to be dressed in the following manner: Males shall wear long pants, dress shirts and shoes. Females shall wear dresses, long pants or skirts, blouses and shoes.

## Continuances and Settlements

Requests for continuances and settlements must be made to the assigned judge's calendar or courtroom Clerk as soon as possible and before making any written request. The request must be accompanied by representation by counsel that they have consulted with the other parties in interest, must identify specifically who has been consulted, and must state whether or not the other parties in interest consent to the continuance or settlement.

Even the representation that a continuance or settlement has been agreed to is not a guarantee that the court will approve the matter if, in the opinion of the court, the rights of other parties are affected or other cause exist.

## Emergency or Expedited Hearings and Motions

When a party files a pleading and seeks to expedite its consideration by the Court to within 10 or fewer days, a separate motion for expedited hearing shall be filed contemporaneously with the affected pleading. The motion shall contain sufficient information on its face to permit the Court to determine the necessity for expedited treatment. All motions to expedite shall have a separate certification regarding the request for emergency hearing and a proposed order sent to the Court's electronic case filing system. The certificate shall substantially comply with the form certificate found in the **CLERK'S INSTRUCTIONS**. LBR 2002-1(g).

Motions for emergency or expedited hearings must be filed pursuant to FRBP 9013. The motion must specify in the caption that an emergency or expedited hearing is sought and must include a statement as to the specific irreparable harm which will be caused if the motion is not granted, not just a statement that irreparable harm will occur.

Please specify in the motion for emergency hearing the time frame within which you are requesting the substantive motion be set. Upon filing of the motion for emergency hearing, the Clerk's office will take steps immediately to bring the motion to the attention of the appropriate judge. It is not necessary, after filing such a motion, to call the Clerk's office to see when the motion will be set for hearing. The Clerk's office will expeditiously handle all properly identified motions for emergency hearing and will contact the movant after obtaining a determination on said motion from the judge. The movant, upon filing of the emergency motion, should be prepared to serve the notice of hearing on all applicable parties, and in certain instances, by telephone or facsimile transmission, if the motion is granted. The certificate of service and/or the certificate of telephone/facsimile notice must be filed prior to the expedited hearing.

## CHAPTER II MATTERS

### Chapter II Plan and Disclosure Statement

- It is the responsibility of the filing party to serve the U. S. Trustee.
- The disclosure statement shall be filed with the plan or within the time fixed by the court. Disclosure statements shall, to the extent applicable, be complete in one document including any attached exhibits and shall include all information pursuant to LBR 3016-2.

### Objections to Confirmation of Chapter II Plan

- Objections to the plan should not be filed until after the disclosure statement has been approved and balloting on the plan has begun. The order approving the disclosure statement sets the date for filing objections to the plan.
- Should you wish a review of the ballot filed prior to the confirmation hearing, please contact the court.

### Ballots - Voting on Plans

For all confirmation hearings the plan proponent shall prepare a written ballot summary in substantially the same form as contained in the **CLERK'S INSTRUCTIONS**. At the confirmation hearing, the original ballot summary and one copy shall be submitted to the court. At that time it shall be marked as an exhibit for the plan proponent. LBR 3018-1.

## Chapter 11 Individual Discharge Procedure

- A. Projected Dates for Completion of Plan Payments: Upon confirmation of an individual debtor's Chapter 11 plan, the Court will continue to resolve all pending matters then before the Court. When all matters have been concluded, the Court will enter a Final Decree directing that the case be closed but that the Court reserves jurisdiction to enter a discharge to the debtor upon completion of all payments under the plan. Any matters that need to be brought before the Court other than the issuance of the discharge will require that the case be reopened by motion pursuant to 11 U.S.C. § 350.
- B. Application for Discharge: Upon completion of all payments under the confirmed plan, an individual debtor shall comply with the procedures contained in the Clerk's Instructions, file a final report and final account in compliance with § 704(a)(9), and file a Certificate of Plan Completion and Request for Discharge.
- C. Certificate of Plan Completion and Request for Discharge: The debtor shall file with the Clerk within 21 days of the entry of the Chapter 11 Individual Final Report and Account, a Certificate of Plan Completion and Request for Discharge.
- D. Discharge and Closing of Individual Chapter 11 Case: After expiration of a 21 day deadline with no objections to the Certificate of Plan Completion and Request for Discharge, the court may grant an individual chapter 11 discharge and close the case.

## Chapter 11 Final Report/Decree (corporation/partnership/other)

- A. Projected Dates for Completion of Substantial Consummation: Non-individual Chapter 11 debtors shall file with the Clerk of Court within 14 days of the date of the entry of the order confirming the plan of reorganization, a report specifying the projected date for substantial consummation as defined in § 1101(2). The report shall describe the action that is to be taken to reach substantial consummation. If the projected date for substantial consummation must be extended, the debtor shall file a supplemental report specifying the new projected date, the progress made toward consummation of the plan, the action remaining to be taken toward substantial consummation, and the reasons for the delay. LBR 3022-1(a)
- B. Application for Final Decree: Upon substantial consummation as defined in § 1101(2), a non-individual Chapter 11 debtor shall comply with the procedures contained in the Clerk's Instructions, file a final report and final account in compliance with § 704(a)(9), file an application for final decree, and submit a proposed final decree. LBR 3022-1(b).

## CHAPTER 12 MATTERS

11 U.S.C. §1221 provides for the filing of a plan by the debtor within 90 days of the filing of the petition, and 11 U.S.C. §1224 provides that the confirmation hearing shall be concluded not later than 45 days from the filing of the plan.

The trustee shall file a Final Report upon discharge, dismissal or conversion of the case.

## CHAPTER 13 MATTERS

The debtor shall file the initial Chapter 13 plan at the time of the filing of the petition whenever possible. If a Chapter 13 plan is not filed with the petition, it shall be filed within the time allowed by FRBP 3015 (b).

Any plan not filed within 24 hours of the filing of the petition shall be served by the debtor on all interested parties in the case. The debtor shall file with the court a certificate of service immediately thereafter showing that the Chapter 13 plan has been served.

LBR 3015-1 requires the use of a standard Chapter 13 Plan and which shall substantially conform to the plan form contained in the **CLERK'S INSTRUCTIONS**.

A modification of a plan pursuant to §1329 or §1323 of the Code shall include a description of each proposed change or modification. This requirement cannot be satisfied by simply attaching the new proposed plan to the modification. The modified plan shall be served by the proponent of the modification on the Trustee and on all parties in interest affected by the modification pursuant to LBR 9007-1 and LBR 2002-1(e). For all post-confirmation modifications, the debtor shall prepare and file a budget of current income and expenses. LBR 3015-2.

All creditor objections to confirmation of a Chapter 13 Plan shall comply with LBR 3015-3.

## Conversions

Code §706, §1112, §1208, §1307, FRBP 1017, 1019.

Conversion fees may be found in the **CLERK'S INSTRUCTIONS**.

If the trustee serving in the case before the conversion is the movant, the fee shall be payable only from the estate that exists prior to conversion.

Conversion of a Chapter 7 Case: A debtor may convert a Chapter 7 case to a case under Chapter 11, 12, or 13, by filing a motion with notice to all interested parties pursuant to LBR 9007-1 or LBR 2002-1(e). If no objection is filed, the Court shall enter an order granting the conversion. LBR 1017-1(a).

Conversion of Chapter 11 case to a case under Chapter 7: A debtor may convert a Chapter 11 case to a case under Chapter 7 by filing and serving a notice of conversion. If there is no pending motion to dismiss in the Chapter 11 case, the effective date of conversion shall be the date the notice of conversion is filed. If a motion to dismiss is pending in a Chapter 11 case at the time the debtor requests conversion, all interested parties shall be served pursuant to LBR 9007-1 or LBR 2002-1(e). If no objection is filed, the Court shall enter an order granting the conversion, and the case shall be converted as of the date of the order. LBR 1017-1(b).

Trustee Fee Allowable Upon Conversion: If a Chapter 13 case is converted prior to confirmation of a Chapter 13 plan, or prior to any disbursement to creditors, the Chapter 13 Trustee shall be allowed to retain up to \$100.00 as an administrative expense without further motion or order of the court. LBR 1019-1(a).

Duty of Trustee Upon Conversion: Upon conversion of a case from Chapter 13 or Chapter 7 to any other chapter under title 11, the Trustee shall file an account of all receipts and disbursements made in the case and a report on the administration of the case pursuant to § 704(a)(9) and § 1302(b)(1). The Trustee is discharged from the case 30 days after the filing of the required reports. . LBR 1019-1(b).

Disposal of Pending Motions to Dismiss Upon Conversion: All pending motions to dismiss filed by the Trustee prior to the conversion of a case shall be deemed terminated as moot. LBR 1019-1(c)

Duty to Amend: Upon conversion of a case, the debtor shall, within 14 days of the effective date of conversion, file inventories, schedules, and statements of financial affairs as may be applicable, or amend

such items to include any interest in property acquired since the entry of the order for relief in the original chapter. The amendments shall account for any material additions, deletions, or other changes in the debtor's assets or liabilities. The amendments shall add to the mailing matrix any post-petition, pre-conversion creditors. If no amendments or additional inventories, schedules, or statements are necessary, the debtor shall file a certificate to that effect within the 14-day period. LBR 1019-1(d).

Duty to Attend Scheduled §341 Meeting of Creditors: The filing of a motion to convert a Chapter 7 case shall not relieve the debtor and debtor's counsel from attending the §341(a) Meeting of Creditors scheduled in the Chapter 7 case unless the motion has been granted prior to the Meeting. LBR 1019-1(e).

## Dismissals (LBR 1017-2)

**VOLUNTARY DISMISSAL OF A CHAPTER 7 CASE:** A motion for voluntary dismissal of a Chapter 7 case shall state with specificity the cause or reason for the dismissal and shall list any asset previously undisclosed that would be property of the estate under 11 U.S.C. §541, including any newly discovered or anticipated inheritances. If no such assets exist, the motion shall contain a statement by the debtor under oath that no such assets exist. Prior to the voluntary dismissal of a Chapter 7 case, all administrative expenses shall be paid. Prior to the voluntary dismissal of a Chapter 7 case, all administrative expenses shall be paid. A motion for voluntary dismissal of a Chapter 7 case shall be served pursuant to LBR 9007-1 or LBR 2002-1(e).

**VOLUNTARY DISMISSAL OF A CHAPTER 12 OR CHAPTER 13 CASE PREVIOUSLY CONVERTED FROM CHAPTER 7:** A motion by a debtor to dismiss a Chapter 12 or Chapter 13 case that was previously converted from Chapter 7 shall specify the grounds for the motion. A motion by the debtor to dismiss a Chapter 12 or Chapter 13 case previously converted from a Chapter 7 case shall be served pursuant to LBR 9007-1 or LBR 2002-1(e). Any such motion shall also be served on the Chapter 7 Trustee originally appointed in the Chapter 7 case.

**TRUSTEE FEE ALLOWABLE UPON DISMISSAL:** If a Chapter 13 case is dismissed prior to confirmation of a Chapter 13 plan, or prior to any disbursement to creditors, the Chapter 13 trustee shall be allowed to retain up to \$100.00 as an administrative expense without further motion or order of the court. However, prior to the payment of any such expense, the Chapter 13 Trustee shall pay any unpaid portion of the filing fee.

**VOLUNTARY DISMISSAL OF CHAPTER 11 CASE:** A debtor's motion to dismiss a Chapter 11 case shall specify the grounds for the motion. The debtor shall obtain a hearing date for the motion and serve the motion for voluntary dismissal, along with a notice of hearing pursuant to LBR 9007-1 or LBR 2002-1(e).

**MOTION BY CHAPTER 7 TRUSTEE TO DISMISS CASE FOR FAILURE TO ATTEND THE §341 MEETING OF CREDITORS:** A motion to dismiss a Chapter 7 case by the Chapter 7 trustee for failure of the debtor to appear at the §341(A) Meeting of Creditors shall be served on all entities required by FRBP 2002(a) and shall comply with LBR 9007-1 or LBR 2002-1(e).

**DISMISSAL FOR FAILURE TO FILE DOCUMENTS AND INFORMATION REQUIRED BY 11 U.S.C. §521 AND FRBP 1007.** If the information and documents required by §521 and FRBP 1007 are not filed upon the commencement of the case, the Clerk of Court shall notify the debtor and debtor's counsel that the missing information shall be filed within 14 days from the date of the notice. If the information and documents are not filed within the 14 days of the date of the notice, and the debtor has not

requested a hearing during the 14 days, the bankruptcy case may be dismissed by the Court without further notice or hearing.

**AUTOMATIC DISMISSAL PURSUANT TO §521: MOTIONS TO DISMISS FOR INSUFFICIENCY OF INFORMATION REQUIRED BY § 521.** No case shall be automatically dismissed without a written order of the court. The Court shall deem the information required to be filed by §521 and FRBP 1007 to be sufficient unless the Court has dismissed the case pursuant to LBR 1017-2(f), or a motion to dismiss is filed respecting the sufficiency of the information by the 45<sup>th</sup> day after the filing of the petition.

**EFFECT OF DISMISSAL ON RELATED ADVERSARY PROCEEDINGS AND MOTIONS:** After dismissal of a bankruptcy case, any pending adversary proceedings shall be dismissed by the Court unless the Court determines that it should retain jurisdiction. The Court reserves jurisdiction over any pending contested matters. However, such matters shall be deemed moot unless within 14 days after entry of the order of dismissal the movant requests that the motion remain active pending further order of the Court.

**EFFECT OF DISMISSAL ON FUTURE FILINGS BY THE DEBTOR:** All orders of dismissal shall be silent as to the prejudicial effect of the dismissal on future filings by the debtor unless the Court directs otherwise.

## **Sale of Estate Property (LBR 6004-I)**

**NOTICES:** Notices required by FRBP 6004 shall be prepared by the movant. A notice shall, in addition to the requirements of FRBP 2002(c)(1) and LBR 9004-1, contain the name and address of the proposed buyer, if known, and estimated cost of the sale or lease, including commissions, auction fees, document preparation costs, recordation fees and other such expenses.

**CHAPTER 12 AND 13 CASES:** Before filing any motion for proposed use, sale or lease of property in a Chapter 12 or Chapter 13 case, the movant shall consult with the Trustee and determine, if possible, whether the Trustee will consent to the motion. Any such motion shall indicate that such consultation has taken place and shall recite the Trustee's position, if known to the movant.

**SALES OF PROPERTY SUBJECT TO SECURITY INTEREST:** Any motion to sell property that is subject to one or more claims of security interest shall set forth the identity of the creditor, the description of property subject to such claim, and the amount of such claim. Compliance with this rule shall not constitute waiver of the movant's right to object to the validity or priority of such liens.

## **Deconsolidation/Separate Administration (LBR 1015-I(b))**

Separation of Estates: A joint petition which was filed and jointly administered pursuant to LBR 1015-1(a) may be separately administered upon motion by a debtor, Trustee, other party in interest, or on the Court's own initiative. Notice of separation shall specify any additional case numbers to be used to reference the separate estates. If a debtor, Trustee, or other party in interest wishes to separate the estates, the motion shall be served pursuant to LBR 9007-1.

Fees Due Upon Separation of a Joint Case: When the Court orders separate administration in a joint case based upon a request by the debtor, a fee shall be charged equal to the current filing fee for the chapter in which the joint case was commenced. All other orders separating cases otherwise jointly administered will not result in the assessment of an additional filing fee.



Amended Schedules and Modified Plans Upon Separation of a Joint Case: When the Court orders separate administration of a joint case, the debtors shall file amended schedules reflecting the financial status of the separate estates within 14 days following entry of the order. If the case is filed in Chapter 11, 12, or 13, the debtors shall file separate modified plans within the 14 days following entry of the order. Plans shall specify which estate will be responsible for each secured debt.

## RETURNED NOTICES/UNDELIVERABLE NOTICES

Notices from the Court as generated by and mailed out of the Bankruptcy Noticing Center including notice of any orders entered by the Court shall contain a return address for the attorney representing the debtor. If the debtor is pro se, the notices shall be returned to the Clerk of Court. If a notice is returned to debtor's attorney as undelivered, or the attorney is given notice by the Bankruptcy Noticing Center that a notice was returned to the Bankruptcy Noticing Center, the debtor's attorney shall be responsible for determining the correct address for the addressee on each returned notice. The debtor's attorney shall re-serve the notice and file a certificate of such service. At the time of the certification, the debtor's attorney shall also provide the Clerk of Court with any corrected address. If corrected addresses are unavailable, counsel for debtor shall inform the Clerk by filing an appropriate certification, and the Clerk is then authorized to remove any incorrect address from the mailing list. If the debtor is pro se, the Clerk's office shall attempt to resolve any undelivered notices. If unable to locate a corrected address for a returned notice, the Clerk is authorized to remove any incorrect address from the mailing list. LBR 2002-1(h)

If a creditor address is provided to the Court, which cannot be mailed by the Bankruptcy Noticing Center, the debtor's attorney will be notified that the address is insufficient and the notice of the § 341(a) Meeting of Creditors for the particular creditor involved was undeliverable. The attorney shall immediately ascertain the correct address for such creditor and serve the notice of the § 341(a) Meeting of Creditors at the correct address. The attorney shall file a certification regarding service of such notices in a form specified in the **CLERK'S INSTRUCTIONS**. LBR 2002-1(i)

## Master Mailing List/Matrix (LBR 1007-2)

**GENERAL REQUIREMENTS:** At the time of filing a voluntary petition the debtor shall file a list of creditors which shall include in alphabetical order the name and last known mailing address for every scheduled creditor including individuals and entities co-obligated with the debtor on any debts. In an involuntary case the debtor or, upon order of the Court, a petitioning Creditor or partner, shall file the list within 7 days following the entry of an order for relief.

The creditor matrix shall include the agencies and officers of the U.S. Government required to be served pursuant to FRBP 2002(j). Addresses for proper notice to major agencies of the U.S. Government are listed in the **CLERK'S INSTRUCTIONS**.

If the debtor owes a federal tax debt, the creditor matrix shall include the address of the Internal Revenue Service office having responsibility for monitoring the case. Addresses for proper notice to the Internal Revenue Service are listed in the **CLERK'S INSTRUCTIONS**.

If the debtor is a partnership, the creditor matrix shall contain the name and current mailing address of each general and limited partner.

If the debtor is a corporation, the creditor matrix shall contain the names and current mailing addresses of the present officers and directors and, if known, the immediate past officers and directors.

The creditor matrix shall contain the name and last known address or place of business of each equity security holder, if applicable.

The creditor matrix shall be accompanied by a certification signed by the debtor attesting that the list contains all known creditors including any individuals and entities co-obligated with the debtor on any debts.

The creditor matrix shall conform to the requirements found in the **CLERK'S INSTRUCTIONS**.

## HELPFUL REMINDERS

- ▶ Any motion which may be granted without a hearing shall have a proposed order bearing a title which describes relief granted sent as an E-Order to the Court's electronic filing system. If the motion requests alternative relief as allowed under LBR 9004-1(a), the order shall dispose of all matters raised in the motion. If a hearing is held on the motion and the proposed order is no longer appropriate to the outcome of the hearing, the movant shall upload an appropriate order at the earliest opportunity.
- ▶ FRBP 9011 requires an attorney to list his/her name, address, and telephone number on every document filed with the court. Additionally, LBR 9011-1(b) requires that each attorney shall include the attorney's state bar number on all documents filed with the Court. The state bar number shall be placed on the document in immediate proximity to the attorney's signature.
- ▶ Orders requested by the court should be uploaded within 7 days of the request.
- ▶ In all pleadings, the caption shall indicate the chapter in which the case is filed and, as part of the case number, include the initials of the judge assigned to the case.  
LBR 9004-2.
- ▶ On all schedules and statement of affairs, in the event the answer to the question is "Not Applicable" or "None", the debtor should indicate N/A or None, instead of leaving blank.

### IF UNABLE TO FILE ELECTRONICALLY:

- ▶ All paper documents filed with the court must be on 8 ½ x 11 paper. Any attachments to claims shall be no larger than 8 ½ x 11 and stapled behind the claim in the upper left hand corner.
- ▶ Cover letters transmitting documents are not necessary unless requested to be used as an acknowledgment.
- ▶ Manuscript covers should not be used.
- ▶ The caption on paper documents should be formatted with room for the filed stamp on the top right side of the first page.
- ▶ Paper documents submitted for filing should **NEVER** be duplexed (copied on both sides).
- ▶ Debtor-filed claims should be legible (typewritten) and contain full name and address of the creditor, including the zip code. Please include the words "filed by debtor" in the box titled "Name of Creditor".

Correct amount of the claim should be shown. Creditor must have been previously scheduled by the debtor and notified. Such claims should be filed at least 7 days prior to the confirmation hearing to give the Chapter 13 trustee time to include them in the calculation.